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MS. HANNAH:

CIRCUMSTANCES AND THE RESULT OF THE INCIDENT THAT OCCURRED ON
MARCH 19TH OF LAST YEAR. WHETHER THE ISSUE -- THE WHOLE
QUESTION OF THE TRIAL IS WHETHER MR. BURTON IS THE PERSON THAT
COMMITTED THE ^{ALLEGED} CRIME, NOT WHETHER OR NOT MR. THOMAS IS, IN FACT,
A VICTIM OF A CRIME.

BUT THE PEOPLE CAN CERTAINLY REFER TO MR. THOMAS AS
MAS.

THE COURT: ALL RIGHT.

1 **THE COURT:** ALL RIGHT. LET'S GO BACK IN THE
2 HALLWAY FOR A MOMENT.

3 (THE COURT, BOTH COUNSEL, AND THE COURT
4 REPORTER EXIT THE COURTROOM.)

5 (THE FOLLOWING PROCEEDINGS WERE HEARD AT
6 SIDEBAR:)

7 **MR. ADAIR:** I HAVE CONCERNS UNDER 352. I'M
[REDACTED]
[REDACTED]

10 TYPE OF THING THAT I DON'T SEE WHAT THE RELEVANCE OF IT
11 IS. [REDACTED]
[REDACTED]
[REDACTED]

14 **MR. TROCHA:** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 WE HAVE EVIDENCE THAT THE DEFENSE HAS BROUGHT
22 OUT, AND IS GOING TO BRING OUT FURTHER IN THEIR CASE IN
23 CHIEF, THAT MR. THOMAS IS, IN FACT, THE AGGRESSOR. I
24 BELIEVE THIS BELT BUCKLE SHOWS MR. BURTON ISN'T EXACTLY
25 A SAINT HIMSELF. [REDACTED]
[REDACTED]

27 **THE COURT:** ANYTHING FURTHER IN REPLY?

28 **MR. ADAIR:** JUST IT'S PRETTY SPECULATIVE. IS

1 WHAT HE MEANS JUST HAVING THE BELT BUCKLE WITH AN EMBLEM
[REDACTED]

3 THE COURT: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] I DON'T

8 THINK IT HAS STRONG PROBATIVE VALUE, [REDACTED]
[REDACTED]

10 MR. TROCHA: STANDING ALONE, IT'S NOT ENOUGH,
[REDACTED]

12 THE COURT: THAT'S FINE. I THINK IT'S
13 APPROPRIATE AND THE OBJECTION IS OVERRULED.

14 MR. ADAIR: THIS MIGHT BE A GOOD TIME TO
15 MENTION THAT I'M NOT SURE WHAT ELSE THAT BELONGED TO
16 MR. BURTON WOULD BE INTRODUCED --

17 MR. TROCHA: AND, AGAIN, I DON'T WANT TO
18 BELABOR THE POINT.

19 THE COURT: YOU'RE GOING TO HAVE THE CLOTHING
20 TO GO THROUGH ALL THE DIFFERENT THINGS HE JUST SAID?

21 MR. TROCHA: NO. I WANT TO HAVE HIM DESCRIBE
22 TODAY WHAT WAS RECOVERED. WE HAVE IT IN EVIDENCE, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26 THE COURT: SO IF THE DEFENDANT WERE TO
27 TESTIFY HE DIDN'T SHOOT ANYONE, [REDACTED]
[REDACTED]

1 MR. ADAIR: YES. HE BASICALLY SAID THAT
2 THINGS WERE FINE BETWEEN HE AND MELANIE CLARK UNTIL HE
3 GOT ARRESTED.

4 THE COURT: ALL RIGHT. WELL, IF THE PROBATION
5 OFFICER BECOMES AVAILABLE, I'LL CONSIDER THAT. AND
6 PROBABLY ADMISSIBILITY WILL DEPEND IN PART ON HOW MANY
7 OTHER WITNESSES YOU'VE ALREADY PRESENTED AS TO WHAT --
8 CONFLICT WITH WHAT MR. THOMAS HAS SAID.

9 I WENT THROUGH MY NOTES TO REVIEW IT.

10 MR. THOMAS, [REDACTED], HE ADMITTED
11 QUITE A BIT TOO. SO YOUR INTENTION AND YOUR PURPOSE IS
12 TO SHOW HIS CHARACTER FOR VIOLENCE AND ALSO PERHAPS
13 DISHONESTY. HE HAS ADMITTED VARIOUS CONVICTIONS. HE'S
14 ADMITTED THAT HE FOUGHT A LOT WITH MS. CLARK. HE
15 ADMITTED SHOVING HER. HE -- AS TO THE STALKING
16 INCIDENTS, HE ADMITTED SOME OF THOSE INCIDENTS INCLUDING
17 THROWING OBJECTS AT THE WINDOW, CALLING ON THE PHONE,
18 MAKING MULTIPLE CALLS. HE DISPUTED THE DATE, BUT HE
19 AGREED HE DID THAT. HE AGREED THAT HE HAD TOLD HER THAT
20 IF HE DIDN'T GET THE CAR BACK, HE HAD A BULLET WITH HER
21 NAME ON IT.

22 SO THERE ARE -- THROUGH HIS OWN ADMISSIONS,
23 AND THEN AS TO -- LET'S SEE. I THINK HE'S STILL TALKING
24 ABOUT MS. CLARK WHEN HE SAYS THAT THEIR RELATIONSHIP WAS
25 STORMY; THAT HE WAS PHYSICAL A COUPLE OF TIMES, MAYBE 60
26 TO 70 ARGUMENTS; CHOKED HER IN '93; HAS A PROBLEM WITH
27 HIS TEMPER. SO I THINK ALREADY HE'S ADMITTED SOME OF
28 THAT. AND I'LL ALLOW YOU TO IMPEACH HIM ADDITIONALLY,

4

(R)

0011

F I L E D
Clerk of the Superior Court

JUL 30 2004

By: M. Rapolla, Deputy

1 Lee Plummer
2 Attorney at Law
3 State Bar # 77783
4 4045 Bonita Rd. #202
5 Bonita, Ca. 91902
6
7 Telephone number (619) 267-1710
8
9 Attorney for Eric Wilton Burton
10
11

12 SUPERIOR COURT OF CALIFORNIA
13 COURT OF THE EAST COUNTY DIVISION
14

15 COUNTY OF SAN DIEGO

16 PEOPLE OF THE STATE OF CALIFORNIA,)

17 Plaintiff,)

18 vs.)

19 ERIC WILTON BURTON)

20 Defendant.)

Date 8-20-04 9:30 AM
D-11

No. SCE238643

NOTICE OF MOTION FOR

DISCOVERY

MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION

21 TRIAL DATE: August 23, 2004

22 TO THE ABOVE-ENTITLED COURT AND TO MARIA HANNAH, DEPUTY DISTRICT
23 ATTORNEY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

24 PLEASE TAKE NOTICE that on _____, in Department _____ at _____, or as soon
25 thereafter as the matter may be heard, the defendant, ERIC WILTON BURTON, will move that the
26 Court compel discovery of the items previously requested informally of the prosecution on JULY 6,
27 2004, and not given to the defense. Those items are listed in the attached declaration of counsel. This
28 motion will be based on the attached memorandum of points and authorities, the attached declaration
all papers filed and records in this action, evidence taken at the hearing on this motion, and argument
at that hearing.

(5)

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STATEMENT OF THE CASE

On March 23, 2004 the defendant was charged with attempted premeditated murder and assault with a ^{ALLEGED} semi-automatic firearm. In addition there were allegations of personal use of a ^{ALLEGED} gun. A preliminary hearing was held on April 28, 2004 and trial is presently set for August 23, 2004.

MEMORANDUM OF POINTS AND AUTHORITIES

AN INFORMAL DISCOVERY REQUEST HAS ALREADY BEEN MADE OF THE PROSECUTION, AND THERE WAS NO RESPONSE

The defense is required to informally seek discovery at least 15 calendar days before asking for court-ordered discovery. (Penal Code section 1054.5(b).) In this case, the defense met that obligation. A letter was sent to the District Attorney's office on July 6, 2004. A copy of that informal request is attached as Exhibit A. There has been no response to the request.

THE DEFENSE ASKS THE COURT TO ORDER THE PROSECUTION TO DISCLOSE TO THE DEFENSE THE ITEMS LISTED BELOW. ALL OF THEM WERE REQUESTED INFORMALLY OF THE PROSECUTION, BUT NONE HAVE BEEN GIVEN TO THE DEFENSE

The defense requests that the court order the prosecution to disclose all items that were requested in the informal discovery request that is attached as Exhibit A, and that are described below.

DEFENDANT'S STATEMENTS

All ^{ALLEGED} statements by the defendant, however recorded or preserved, whether or not signed or acknowledged by the defendant, whether made to police officers or to other people, and the names,

(6)

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1 addresses, and telephone numbers of any and all witnesses to the making of said statements. If such
2 statements were oral, they shall be reduced to written form and provided to defense counsel. If any such
3 statements were tape-recorded and/or videotaped, the defense shall be permitted to copy such videotape
4 and/or tape-recording and, in addition, any transcript made thereof. Any notes of any such statements,
5 utterances or memoranda shall be preserved, and a copy provided to the defense.

6
7 **AUTHORITIES:** Penal Code section 1054.1(b).

8
9
10 **STATEMENTS USED DURING INTERROGATION OF DEFENDANT**

11
12 All statements of any person that were shown, read, played, or paraphrased to the defendant
13 during any interrogation conducted by law enforcement. The content of any statements made to the
14 defendant or anyone else in the defendant's presence, which (a) were made in order to encourage the
15 defendant to cooperate with the police and/or (b) might reasonably be expected to have the effect of
16 encouraging the defendant to give a statement about the offense to the police.

17
18 **AUTHORITIES:** Penal Code section 1054.1(e); Brady v Maryland (1963) 373 US 83, 83 S Ct
19 1194, 10 L Ed 2d 215.

20
21
22 **OBSERVATIONS OF DEFENDANT AT AND NEAR TIME STATEMENT MADE**

23
24 All memoranda or reports of observations made by police officers, or prosecution investigators
25 and psychotherapists at or near the time of the arrest of the defendant, and at or near the time of the
26 making of any statement, utterance, or memoranda by the defendant, concerning the defendant's physical
27 appearance, emotional state or state of sobriety.

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1 AUTHORITIES: Penal Code section 1054.1(e).

2
3
4
5 PHOTOS, ETC. OF SCENE OF ^{ALLEGED} CRIME

6
7 All photographs, transparencies, slides, diagrams, motion pictures, and videotapes of the scene
8 of the alleged offense.

9
10 AUTHORITIES: Penal Code section 1054.1(c), (e).

11
12
13
14 WITNESSES TO BE CALLED AT TRIAL

15
16 The names, current addresses, telephone numbers, and all statements, oral or written, of every
17 prosecution witness whom the prosecution reasonably anticipates it is likely to call to testify at trial
18 including notes from interviews with these witnesses.

19
20 AUTHORITIES: Penal Code section 1054.1(a)

21
22
23 CRIMINAL RECORD OF WITNESSES TO BE CALLED AT TRIAL

24
25 For each witness who may be called to testify at trial, all records, including police reports, relating
26 to any felony conviction, or any misdemeanor charge, any pending charges, any pending parole or
27 probation, anywhere in California, both at the time of the alleged offense and presently pending. Also any
28 docket numbers or CEN numbers generated by the incident giving rise to the report.



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1 witness's mental or physical abilities to observe or recollect, or related to the subject matter of his or her
2 proposed testimony. All notes and reports of observations of police officers and investigators concerning
3 the state of sobriety at the time of the charged offenses of those witnesses.

4
5 AUTHORITIES: Penal Code section 1054.1(e); Evidence Code section 780; Brady v Maryland,
6 supra.

7
8
9 PRIOR VIOLENT ACTS OF ^{ALLEGED} VICTIM

10
11 Regarding the complaining witness, based on Penal Code section 1054.1(a), (d)-(f), and Brady
12 v Maryland, supra, counsel requests:

13
14 1. All records concerning the arrest or conviction of the complaining witness for specific acts of
15 aggression, together with the names and addresses of witnesses to such acts.

16
17 2. All records concerning any felony and misdemeanor convictions suffered by the complaining
18 witness to impeach his credibility.

19
20 3. All police reports made within the last five years in which the complaining witness reportedly
21 assaulted or otherwise engaged in violent conduct against the defendant. (Engstrom v Superior Court,
22 supra.)

23
24 4. All probation reports regarding the complaining witness made within the last five years. (Penal
25 Code section 1203.05.)

26
27 5. Any and all criminal charges pending against the complaining witness in any county in the State
28

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1 of California.

2
3 6. The probationary status of the complaining witness in any county in the State of California.

4
5 7. The police reports for all arrests and convictions for criminal activity on the part of the
6 complaining witness, as well as any docket numbers or CEN numbers generated by the incident giving
7 rise to the report.

8
9 AUTHORITIES: California Const article I, section 28(d); People v Wheeler (1992) 4 C4th 284,
10 14 CR2d 418; People v Mickle (1991) 54 C3d 140, 168, 284 CR 511.

11
12
13 DOCUMENTS USED TO REFRESH RECOLLECTION

14
15 All notes made by prospective witnesses relating to matters covered in their testimony at the
16 preliminary examination and all documents used by a prosecution witness to refresh his or her memory
17 at the preliminary examination or before trial.

18
19 AUTHORITIES: Penal Code section 1054.1(f).

20
21
22 PROSECUTION OFFERS TO DEFENDANT OR WITNESSES TO OBTAIN INFORMATION
23 OR TESTIMONY

24
25 As to defendant and all witnesses who may be called to testify at the trial of the case and any and
26 all persons who were percipient witnesses to the alleged offenses, whether or not they are to be called
27 to testify at the trial of the case: any and all promises, inducements, offers of reward or immunity, plea
28 agreements, or affirmative representations made or implied to such persons in an effort to obtain



1 information or testimony as to the investigation and/or prosecution of the alleged offenses as charged in
2 the information, and, as to such persons, any and all threats made or implied for a like purpose.

3
4 **AUTHORITIES:** Penal Code section 1054.1(e); Evidence Code section 780.

5
6
7
8 **LAW ENFORCEMENT REPORTS, ETC.**

9
10 All reports, notes, documents, diagrams, memoranda, and records, however recorded or
11 preserved, prepared by any police officer or at a police officer's direction in connection with this incident,
12 including, but not limited to, the investigating officers' log, defendant's booking sheet, and defendant's
13 arrest sheet. All notes made by any police officer in connection with this case shall be preserved and a
14 copy provided to defense counsel. "Notes," as used above, include those in the official case file and,
15 additionally, those outside the official file, such as "street files," "criminal investigation files," "field
16 investigation notes," etc.

17
18 It is further requested that the prosecution immediately notify all police officers involved in this
19 investigation to preserve any original notes that they may have made during this investigation.

20
21 **AUTHORITIES:** Penal Code section 1054.1(e)-(f); Brady v Maryland, supra. (See discussion
22 in the Prosecution Comment at the end of this motion.)

23
24
25
26 **OPPORTUNITY TO VIEW ALL EVIDENCE**

27
28 An opportunity to view and examine all physical evidence obtained in the investigation of the



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1 charged offense, including a copy of all property record sheets, and copies of all photographs, motion
2 pictures, videotapes, slides, or transparencies taken of any physical evidence and of the scene of the
3 alleged offense, and copies of all photographs taken of the defendant at or near the time of the charged
4 offense, including the booking photograph of the defendant.

5
6 AUTHORITIES: Penal Code section 1054.1(c).

7
8
9 REPORTS AND RECORDS OF EXPERTS CONCERNING CASE

10
11 All reports and records of all chemical, biological, medical, criminological, laboratory, or other
12 testing and examination of any physical evidence in this action, including, but not limited to, the ^{ALLEGED} victim's
13 body, bodily fluids, and/or clothing, and the defendant's body, bodily fluids, and/or clothing. All reports
14 and records of experts involving mental examinations of the defendant or a witness in the case. Copies
15 of any notes, tape recordings, or any other records or documents used or completed in the course of such
16 testing and examination. The name, address, and telephone number of each person who conducted or
17 performed any such test, examination, or analysis. The name, address, and telephone number of any
18 person who reviewed any such test, examination, analysis, or report for any expert opinion, with a copy
19 of each person's report, evaluation, review and/or analysis. The curriculum vitae of any expert who
20 conducted a test, wrote a report, or reviewed an expert's test or report in this case, who will testify as
21 an expert at the preliminary hearing or at trial.

22
23 AUTHORITIES: Penal Code section 1054.1(f).

24
25
26
27
28
(13)

0020

1
2
3 **PROPERTY SEIZED FROM DEFENDANT**
4

5 The exact location of any property seized from defendant by warrant or process, including a
6 specific description and inventory of such property; the circumstances of the search and seizure attendant
7 to such taking; the names and official positions of law enforcement personnel, whether federal, state, or
8 local, involved in said search and seizure, as well as the identities of any additional third persons who
9 were present; a specification of items that were seized in addition to those belonging to, or alleged to
10 belong to defendant, including those alleged to belong to others; the precise time of each search and
11 seizure; the exact beginning and ending time of the search; the exact time of any arrests made during the
12 search and the names, addresses, telephone numbers, and rank of the arresting officers, and the location
13 of such arrest; the manner of entry involved in said search and seizure; any reports of visual surveillance
14 of defendant, codefendant or third parties, by law enforcement officers conducted prior to any of the
15 aforesaid searches.
16

17 **AUTHORITIES:** Penal Code section 1054.1(c), (e); U.S. v Nolte (ND Cal 1965) 39 FRD 359.
18
19

20 **EVIDENCE FAVORABLE TO DEFENDANT (BRADY DISCOVERY)**
21

22 Any evidence that would tend to exonerate the defendant ("Brady" discovery), minimize his
23 probable sentence, or that constitutes information that the defense might use to impeach or contradict
24 prosecution witnesses. Brady discovery includes information that relates to the existence of evidence
25 tending to suggest that someone other than the defendant committed any or all of the crimes charged
26 against the defendant. Brady discovery also includes any evidence that would tend to support a factor
27 in either aggravation or mitigation as set forth in Penal Code section 190.3.
28

14

0021

1 AUTHORITIES: Penal Code sections 1054.1(e), 1054.5(c); Izazaga v Superior Court (1991) 54
2 C3d 356, 378, 285 CR 231 (Brady disclosure required even though not included within Pen C §1054.1,
3 because it is mandated by United States Constitution); People v Ruthford (1975) 14 C3d 399, 406, 121
4 CR 261; Napue v Illinois (1959) 360 US 264, 3 L Ed 2d 1217, 79 S Ct 1173.

5
6
7
8 CONTINUING ORDER; COPIES OF ORDER TO BE GIVEN TO LAW

9
10 ENFORCEMENT

11
12 The defendant requests that each of the above orders be continuing orders through the completion
13 of trial, so that items granted that become available after the date of this order are to be made
14 immediately available to defense counsel. This order is to be given to the prosecutor's investigator and
15 to the police officer in charge of investigating this case, and those persons must immediately give all
16 reports to the prosecutor, who must immediately give them to defense counsel.

17
18 AUTHORITIES: See Pen C §1054.7.

19
20
21 Date: 7-30-04

Respectfully submitted,

22
23
24
25 

26
27 LEE PLUMMER

28 ATTORNEY AT LAW

(15)

0022

DECLARATION IN SUPPORT OF MOTION FOR DISCOVERY

I, Lee Plummer, declare under penalty of perjury that:

1. I represent the defendant in the above-entitled action.

2. On information and belief, the records, documents and information sought by this motion are in the actual and/or constructive possession of the District Attorney of San Diego County.

3. The records, documents, and information sought by this motion are not available to the defendant or his counsel in the exercise of due diligence.

4. The records and documents sought by this motion are necessary to help prepare the defense in this action. The requested discovery will be helpful to the defense case in the following ways: locating witnesses and physical evidence; preparing for the cross-examination and impeachment of witnesses to be called by the prosecution; assessing the credibility of witnesses to be called by the prosecution; assessing the credibility of defense witnesses; corroborating the testimony of defense witnesses; identifying the need for defense expert witnesses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7-30-04



Lee Plummer

Attorney at Law

16

1 THE COURT: 1250 AND 1251?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. ADAIR: THE OTHER THING IS, IT ALSO SORT
7 OF TIES INTO MY REQUEST TO HAVE THE DECLARATIONS IN THE
8 CIVIL RESTRAINING ORDER PROCEEDINGS IN THIS COURT THAT
9 TOOK PLACE WHERE MR. BURTON DID EXPRESS THE FACT THAT HE
10 HAD BEEN THREATENED AND THAT HE WAS AFRAID OF THIS
11 PERSON.

12 THE COURT: SO THAT WOULD BE THE DECLARATION
13 IN THE ORDER TO SHOW CAUSE --

14 MR. ADAIR: YES, YOUR HONOR.

15 THE COURT: -- THAT WAS FILED ON FEBRUARY 20TH
16 OF '04?

17 MR. ADAIR: YES, YOUR HONOR.

18 AND THEN THERE IS NOT QUITE AN ELABORATE A
19 DECLARATION, BUT SOMETHING SIMILAR IN THE CHILD CUSTODY
20 DECLARATION IN A DIFFERENT PROCEEDING IN THIS COURT.

21 THE COURT: AND THAT WOULD HAVE BEEN THE
22 CUSTODY DECLARATION THAT HE FILED AGAINST ANGELA --

23 MR. ADAIR: SANDERS.

24 THE COURT: -- SANDERS.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conflict of interest

883

[REDACTED]

4 THE COURT: ALL RIGHT. LET ME JUST LOOK AT
5 THE DECLARATION HE FILED IN THE CIVIL HARASSMENT CASE.

6 SO THE NATURE OF HIS COMPLAINTS INCLUDE
7 THREATS OF PHYSICAL HARM AND DEATH OVER THE PHONE; WHILE
8 APPROACHING HIS VEHICLE; [REDACTED]

[REDACTED]

[REDACTED]

12 OKAY. MR. TROCHA, YOUR RESPONSE?

13 MR. TROCHA: I THINK WE COVERED THIS IN

[REDACTED]

[REDACTED]

16 IT'S THE DEFENDANT FILING PAPERWORK WITH THE COURT AND

[REDACTED]

18 TO PROVE TO TRUTH THAT HE WAS THREATENED DESPITE THE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 A DIFFERENT STORY.

26 THE COURT: ALL RIGHT. I'LL CONSIDER THAT

27 ~~REQUEST AT THE SAME TIME I LOOK AT THE OTHER ISSUE AND~~

28 I'LL LOOK AT THE CASE LAW INVOLVING 1250 AND 1251.

1 EL CAJON, CALIFORNIA; FRIDAY, 7/29/05; 3:07 P.M.

2 - - -
3 (THE FOLLOWING PROCEEDINGS HAVE BEEN ORDERED
4 SEALED BY THE COURT:)

5 **THE COURT:** ALL RIGHT. MR. BURTON, WHAT IS
6 THE BASIS OF THE MARSDEN MOTION?

7 **THE DEFENDANT:** YES. IT'S INEFFECTIVE
8 ASSISTANCE OF COUNSEL. IT DEPRIVATED MY SIXTH AMENDMENT
9 RIGHT TO AN EFFECTIVE DEFENSE BY NOT PROVIDING THE COURT
10 WITH PERTINENT INFORMATION THAT HE HAD KNOWN ABOUT THAT
11 HE DID NOT PRESENT TO THE COURT. [REDACTED]
[REDACTED]

13 WITNESSES.

14 ALSO, HE FAILED TO FILE THE APPROPRIATE
15 MOTIONS THAT NEEDED TO BE FILED. [REDACTED]

16 [REDACTED] -- A MOTION WHEREAS MY DUE PROCESS WAS
17 VIOLATED BY PROSECUTION'S FAILURE WITHIN A TIMELY MANNER
18 TO PROVIDE DEFENDANT WITH DISCOVERY. HE FAILED TO FILE
19 THE APPROPRIATE MOTIONS TO DISMISS DUE TO DUE PROCESS
20 VIOLATION.

21 THIS IS A LETTER THAT MR. PLUMMER HAD SENT TO
22 MS. HANNAH REQUESTING DISCOVERY, AND ANOTHER LETTER
23 WHERE DISCOVERY -- THE COURT WAS INFORMED THAT THE
24 PROSECUTION HAD ALREADY RECEIVED THE MOTION REQUESTING,
25 UNDER BRADY DISCOVERY. PROSECUTION DID NOT RESPOND
26 [REDACTED], AND I WOULD LIKE THE TRIER OF
27 FACT TO RECONSIDER -- TO RE-RULE ON MY MOTIONS.

28 EXCUSE ME. I NEED MY ENVELOPE RIGHT THERE

1 ON --

2 THE COURT: WELL, ACTUALLY, MR. BURTON, LET ME
3 STOP YOU RIGHT THERE.

5 MOTIONS?

6 THE DEFENDANT: YES, IT DOES, MA'AM.

7 THE COURT: ALL RIGHT.

8
9 AS I TOLD YOU WHEN YOU RAISED
10 YOUR MARSDEN MOTION, I BELIEVE, ON THE FIRST DAY OF
11 TRIAL, YOU HAD RAISED ABOUT TEN POINTS. NINE OF THEM

13 RAISED PRIOR TO THE FIRST DAY OF TRIAL.

14 ONE OF THOSE HAD TO DO WITH DISCOVERY ISSUES.

15 I FIND THAT AT THIS POINT RAISING NEW DISCOVERY ISSUES
16 OR ANYTHING RELATING TO MOTIONS THAT YOU PREVIOUSLY HAVE
17 RAISED REALLY DOESN'T PERTAIN TO A BASIS FOR RELIEVING
18 YOUR COUNSEL AT THIS STAGE.

19
20 AND IT'S DENIED.

21 WITH REGARD TO YOUR COMPLAINT ABOUT THE
22 INVESTIGATION OF DOCTORS, WE DID ADDRESS THAT EARLIER
23 THIS WEEK. AND YOU'VE GIVEN ME ANOTHER DOCUMENT WHICH
24 SIMPLY CONFIRMS THAT YOU HAVE GLAUCOMA. THERE WAS
25 TESTIMONY AT TRIAL -- I DON'T THINK THERE WAS A DISPUTE
26 ON THAT AND IT DOESN'T REALLY ADD TO THE EVIDENCE
27 ALREADY BEFORE US. AND MR. ADAIR DID EXPLAIN TO THE
28 COURT EFFORTS MADE TO EXPLORE THE DEFENSE RELATING TO

1 EYESIGHT SO THAT MOTION, ALSO, I FIND IS NOT A BASIS
2 TO RELIEVE MR. ADAIR AT THIS TIME.

3 I WILL HAVE THE THREE DOCUMENTS THAT YOU
4 SUBMITTED MARKED AS A DEFENDANT'S NEXT IN ORDER FOR
5 PURPOSES OF THE COURT FILE SO THAT YOU'VE MADE YOUR
6 RECORD. IT WOULD BE -- IT COULD BE A COURT EXHIBIT. IT
7 WILL BE COURT EXHIBIT 2, AND IT WILL BE IN THE FILE FOR
8 ANY PURPOSES OF REVIEW FOR APPEAL, BUT YOUR MOTION IS
9 DENIED.

10 (COURT'S EXHIBIT 2, THREE-PAGE DOCUMENT, WAS
11 MARKED FOR IDENTIFICATION AND RECIEVED INTO
12 EVIDENCE.)

13 THE DEFENDANT: MAY I MAKE ONE OTHER MOTION?

14 THE COURT: ~~ONLY ONE~~ -- ON WHAT GROUNDS?

15 ~~WE NEED TO HAVE THE PROSECUTOR PRO~~

16 *retrial* THE DEFENDANT: A MOTION FOR A RETRIAL. *retrial Court should have been*

17 THE COURT: OKAY. THAT WOULD BE A SEPARATE

18 MOTION. Y [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 THE COURT: [REDACTED]

23 [REDACTED] BUT TODAY WOULD NOT BE
24 THE DAY.

25 THE DEFENDANT: YES, MA'AM.

26 (CONCLUSION OF SEALED PROCEEDINGS. UNSEALED
27 PROCEEDINGS CONTINUE ON PAGE 1238; [REDACTED]
28 [REDACTED]

1 PROCEDURALLY I COULD EVEN CONSIDER THE MOTION. AND THEN
2 WE NEED TO GET OVER THAT HURDLE BEFORE WE GO TO THE
3 NEXT.

4 **MR. ADAIR:** WELL, WE'VE REQUESTED
5 PHOTOGRAPHS -- I THINK IT STARTED WITH -- WITH THE PRIOR
6 ATTORNEY ON THE CASE APPROXIMATELY A YEAR AGO REQUESTING
7 PHOTOGRAPHS. AND THEY -- [REDACTED] -- THAT WAS IN
8 THE FORM OF, I THINK, A LETTER AND AN ACTUAL FILED
9 MOTION THAT WAS NEVER HEARD, A DISCOVERY MOTION. THAT
10 WAS LAST YEAR. I FOLLOWED UP WITH A LETTER.
[REDACTED]

12 I FOLLOWED UP WITH A LETTER REQUESTING PHOTOGRAPHS. AND
[REDACTED]
[REDACTED]

15 SO I'M JUST SAYING WE JUST DIDN'T HAVE THE
16 PHOTOGRAPHS, [REDACTED]
17 CAR WAS. [REDACTED]
18 SUPPRESSION MOTION -- [REDACTED]
[REDACTED]

20 **THE COURT:** MR. TROCHA, DO YOU HAVE ANYTHING
21 TO SAY IN RESPONSE?

22 **MR. TROCHA:** I DON'T KNOW THE HISTORY OF THE
23 PHOTOGRAPHS OR ANYTHING, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

27 **THE COURT:** OKAY. [REDACTED]
[REDACTED]

0023

LEE PLUMMER
Attorney at Law
4045 Bonita Rd. #202
Bonita, Ca. 91902
Telephone: (619) 267-1710
July 6, 2004

Maria Hannah
Office of the District Attorney
250 East Main
El Cajon, Ca. 92020

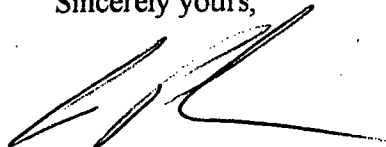
Re: Eric Burton SCE238643

Dear Miss Hannah,

The purpose of this letter is to informally request discovery in the above mentioned case. It appears from the discovery that I have received that there a photographs, tapes of statements, diagrams of the ^{ALLEGED} crime scene and physical evidence that I have not seen. I request production of all evidence sufficiently in advance of trial so that my client and I can adequately prepare for trial.

Your assistance in this matter is greatly appreciated.

Sincerely yours,



24

0104

FILED
MAR 16 2005
EAST COUNTY DIVISION

1 CHARLES H. ADAIR
2 ATTORNEY AT LAW
3 533 F STREET, STE. 212
4 SAN DIEGO, CA 92101
5 619/233-3161
6 STATE BAR NUMBER: 52163

7
8 ATTORNEY FOR DEFENDANT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

ERIC BURTON,

Defendant

CASE NO: SCE 238643

NOTICE OF MOTION
TO EXCLUDE EVIDENCE

DATE: 3/16/05
TIME: 9:00 AM
PLACE: DEPT. 11

TO: THE DISTRICT ATTORNEY OF SAN DIEGO COUNTY, AND MARIA HANNAH,
ASSISTANT DISTRICT ATTORNEY:

PLEASE TAKE NOTICE that on March 16th, 2005 at 9:00 AM, or as soon thereafter as the
matter may be heard in the courtroom of Department 11 of the above-entitled court, the defendant
will move for an order excluding evidence.

This motion will be made on the ground that the intentional, bad-faith loss or destruction of
material evidence by the prosecution has deprived the defendant of due process of law contrary to the
provisions of the Fourteenth Amendment to the United States Constitution and Article I, Section 15
of the California Constitution.

25

0105

1 The motion will be based on this notice of motion, on the attached memorandum of points and
2 authorities served and filed herewith, on such supplemental memoranda of points and authorities as
3 may hereafter be filed with the court, on all the papers and records on file in this action, and on such
4 oral and documentary evidence as may be presented at the hearing of the motion.
5

6 Dated: 3/14/05
7

8 Respectfully submitted
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12

13 CHARLES H. ADAIR
14 Attorney for Defendant
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F I L E D
Clerk of the Superior Court

JUL 13 2007

By: M. AGUILAR, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, EAST COUNTY DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
 v.)
)
 ERIC WILTON BURTON,)
)
 DEFENDANT.)

SCE 238643

ORDER DENYING MOTION
FOR DISCOVERY PURSUANT
TO PENAL CODE § 1054.9

THE COURT, HAVING READ THE REQUEST OF THE DEFENDANT, ERIC
BURTON, AND THE FILE IN THE ABOVE ENCAPTIONED MATTER, FINDS AS FOLLOWS:

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 On October 21, 2005, Defendant was sentenced to the total term of life with the
5 possibility of parole plus 25 years to life in state prison.

6 On June 12, 2007, Defendant filed the present motion for discovery pursuant to Penal
7 Code § 1054.9. Defendant contends that he has requested discovery from the prosecution,
8 but has not been provided with the materials.

9 Penal Code § 1054.9(a) states, "Upon the prosecution of a postconviction writ of
10 habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of
11 life in prison without the possibility of parole has been imposed, and on a showing that good
12 faith efforts to obtain discovery materials from trial counsel were made and were
13 unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant
14 be provided reasonable access to any of the materials described in subdivision (b)."

15 Penal Code § 1054.9 is not applicable to Defendant's case. This code section applies
16 to discovery requests made by defendants who have received a sentence of death or life
17 without the possibility of parole. In the present case, Defendant received a sentence of life
18 with the possibility of parole. As Defendant is eligible for parole, Penal Code § 1054.9 is not
19 applicable to his case.

20 Based on the foregoing, the motion for discovery pursuant to Penal Code § 1054.9 is
21 hereby DENIED.

22 Moreover, discovery is limited after the final judgment of an action. The court in
23 *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 255, held that "jurisdiction of the trial court
24 upon issuance of the remittitur is limited to the making of orders necessary to carry the
25 judgment into effect. (Citations.)...However, the limited powers of the trial court in
26 postremittitur proceedings do not encompass jurisdiction to entertain a detached motion for
27 discovery."

28 The *Ainsworth* court further held that "[t]he right to discovery is associated with the

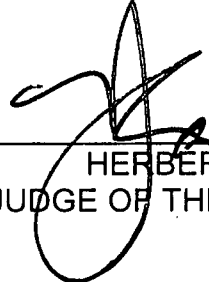
1 fairness of the adversarial process during the course of trial. (Citation.) An accused is
2 entitled to any "pretrial knowledge of any unprivileged evidence, or information that might
3 lead to the discovery of evidence, if it appears reasonable that such knowledge will assist him
4 in preparing his defense,..." (Ballard v. Superior Court (1966) 64 Cal.2d 159, 167, original
5 italics.) [¶] There is no decisional or statutory authority for a trial court to entertain a
6 postjudgment discovery motion which is unrelated to any proceeding then pending before the
7 court. The reason for such lack of authority is simple. As with any other motion, a discovery
8 motion is not an independent right or remedy. It is ancillary to an ongoing action or
9 proceeding. After the judgment has become final, there is nothing pending in the trial court to
10 which a discovery motion may attach." *Id* at 250-251.

11 As the judgment in the above-entitled case is final, this Court would not have
12 jurisdiction to grant a discovery request. There is nothing pending in the trial court to which
13 this request for discovery can attach.

14 The clerk's office is directed to serve a copy of the Order on (1) Defendant and (2) the
15 San Diego County District Attorney's Office.

16 **IT IS SO ORDERED.**

17
18 DATED: JUL 13 2007

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21
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28

HERBERT J. EXARHOS
JUDGE OF THE SUPERIOR COURT

1 ABOUT 10:33. AND THEN WE'LL GO UNTIL THE NOON HOUR.
2 DON'T DISCUSS THE CASE AMONGST YOURSELVES OR WITH ANYONE
3 ELSE. DO NOT FORM ANY OPINIONS. STEER CLEAR OF ANY
4 POTENTIAL WITNESSES WHO MIGHT BE IN THE HALLWAY.

5 (AT 10:18 A.M. THE JURY WAS EXCUSED AND THE
6 FOLLOWING PROCEEDINGS WERE HAD:)

7 ** THE COURT:* ALL RIGHT. THE MEMBERS OF THE
8 PANEL HAVE LEFT THE COURTROOM.

9 MR. TROCHA, WHEN YOU HAD SUBMITTED YOUR MOTION
10 ON EXCLUDING DEFENDANT'S ~~STATEMENTS~~ ^{ALLEGED} STATEMENTS, YOU GAVE ME A COPY
11 OF THE TRANSCRIPT.

12 MR. TROCHA: YES.

13 THE COURT: THERE ALREADY WAS ONE IN THE FILE
14 SO I'M GOING TO RETURN THIS ONE TO YOU. IF AT ANY POINT
15 WE NEED TO DEAL WITH IT FURTHER, YOU CAN VERIFY THAT
16 IT'S THE SAME VERSION.

17 MR. TROCHA: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT. THEN WE'LL BE IN
19 RECESS FOR 15 MINUTES.

20 THANK YOU.

21 (RECESS FROM 10:19 A.M. TO 10:35 P.M.)

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
23 COURT OUT OF THE PRESENCE OF THE JURY:)

24 THE COURT: GO AHEAD.

25 ** MR. ADAIR:* JUST SINCE TESTIMONY CONCERNING
26 THE BLOOD HAS NOW COME IN PROBABLY PRETTY MUCH AS MUCH
27 AS IT'S GOING TO, WE'D LIKE TO RENEW THE MOTION
28 CONCERNING THE REQUEST TO DISMISS BASED UPON THE

1 VIOLATION OF MR. BURTON'S DUE PROCESS RIGHTS IN THE
2 DESTRUCTION OF THE EVIDENCE.. [REDACTED]

3 ON THE GRASS, IT HAD BEEN WASHED AWAY.

4 WE BROUGHT THE MOTION PRETRIAL. IT'S JUST
5 THAT WE'RE RENEWING IT AGAIN AT THIS TIME BASED UPON THE
6 ADDITIONAL EVIDENCE THAT'S COME IN.

7 THE COURT: ALL RIGHT. WELL, AT THIS POINT
[REDACTED]

10 [REDACTED] IT APPEARS THE ONLY TESTIMONY THAT WAS

11 HEARD WAS THAT IT WAS A PERSON LIVING -- [REDACTED]

12 [REDACTED] IN FACT,

13 THAT'S WHY THE GRASS WAS WET. [REDACTED]

14 [REDACTED] THE MOTION IS DENIED. [REDACTED]

15 MR. TROCHA: AND, YOUR HONOR, JUST FOR THE

16 RECORD, [REDACTED]

17 SPRAYED THE GRASS DOWN. [REDACTED]

18 THE COURT: IT'S WET. [REDACTED]

20 MR. TROCHA: OKAY.

21 THE COURT: ALL RIGHT. [REDACTED]

22 TESTIMONY IS THAT SOMEONE SPRAYED THE PORCH AT SOME

23 POINT IN TIME. [REDACTED]

26 THE COURT: ALL RIGHT. ANYTHING FURTHER?

27 MR. TROCHA: NO.

28 THE COURT: LET'S BRING THE JURY IN.

Prosecutions
Exhibit
#113

Failure
to
protect
crime scene
evidence by
people's exhibit
#113

People
Widomke
113

*loss & destruction of favorable
evidence*

2 MS. HANNAH: [REDACTED] THERE
3 WERE NO PHOTOGRAPHS.

4 THE COURT: AND I TAKE IT THE PEOPLE DON'T HAVE ANY?

5 MS. HANNAH: WE DO NOT.

*loss & destruction
of evidence*

6 THE COURT: ALL RIGHT. WELL, DISCOVERY AS TO THE PEOPLE,
7 IF THEY DON'T HAVE IT, THEY CAN'T PRODUCE IT. [REDACTED]

8 [REDACTED]
9 PHOTOGRAPHS. [REDACTED] AT LEAST INFORMALLY TO THE
10 PROSECUTOR, THERE ARE NONE. SO YOU CAN'T ORDER PRODUCTION OF
11 SOMETHING THAT DOESN'T EXIST.

12 ANYTHING ELSE BEFORE WE DEAL WITH THE MARSDEN
13 MOTION?

14 MR. ADAIR: THERE IS ONE ADDITIONAL THING, YOUR HONOR.
15 THE -- DURING THIS PROCEEDING -- AND I NOTICED IT EARLIER, BUT I
16 THINK THIS IS THE APPROPRIATE TIME TO BRING IN THE OBJECTION --
17 A REQUEST AND AN OBJECTION. ALL ALONG WE'VE BEEN REFERRING TO
18 MR. THOMAS AS THE VICTIM, WHICH PRESUPPOSES THAT SOMEONE
19 COMMITTED A CRIME ON HIM.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 SO IT'S OUR REQUEST TO NOT USE THE TERM "VICTIM"

24 [REDACTED]
25 [REDACTED]
26 COURTROOM -- AGAIN, IT'S OUR REQUEST THAT MR. THOMAS BE REFERRED
27 TO BY HIS PROPER NAME AND THAT WE NO LONGER USE THE TERM
28 "VICTIM."

1 EVIDENCE. [REDACTED]

3 MOTION IS DENIED.

4 NEXT MOTION?

5 MR. ADAIR: COULD I HAVE JUST A MOMENT, YOUR
6 HONOR?

7 THE COURT: YOU MAY.

8 (COUNSEL AND THE DEFENDANT CONFER.)

9 MR. ADAIR: I GUESS THERE'S ANOTHER ISSUE
10 UNDER TROMBETTA, YOUR HONOR. THAT THERE WAS -- THAT THE
11 EL CAJON POLICE DEPARTMENT DIDN'T PROPERLY SECURE THE
12 ^{ALLEGED} CRIME SCENE, AND THAT THERE WAS AN AREA OF THE ^{ALLEGED} CRIME
13 SCENE THAT WAS HOSED DOWN BY EITHER THE POLICE
14 DEPARTMENT OR ONE OF THE RESIDENCE RESULTING IN THE
15 DESTRUCTION OF VALUABLE EVIDENCE.

16 THE COURT: [REDACTED]
17 TIME -- IT SOUNDS -- IN MARCH.

18 MR. ADAIR: AND I'M NOT SURE IF IT WAS RULED
19 ON AT THAT TIME THOUGH.

20 THE COURT: I REMEMBER SEEING CHARTS AND
21 EXPLANATIONS ABOUT THE SCENE AND SOME MAPPING OF --

[REDACTED]
23 WAS -- [REDACTED] SO LET ME
24 JUST LOOK HERE.

25 [REDACTED]
26 [REDACTED] AND I THINK THE TRAIL
27 OF BLOOD WAS CONNECTED TO THE ISSUE OF HOSING DOWN THE
28 STREET. [REDACTED]

1 COUNSEL IS REFERRING TO IN TERMS OF ADDITIONAL BLOOD EVIDENCE.
[REDACTED]
[REDACTED]
[REDACTED]

5 THE COURT: ALL RIGHT. THANK YOU.

6 ARE THERE ANY PARTICULAR AREAS OF THE SCENE THAT
7 [REDACTED] OR IS IT THAT YOU'RE
8 ASKING OR ARE ARGUING THAT WHATEVER BLOOD WAS PRESENT, [REDACTED]
9 [REDACTED], SHOULD HAVE BEEN PRESERVED?

10 MR. ADAIR: [REDACTED]
11 BLOOD ON THE GRASS, ON THE SIDEWALK AND ON THE STREET, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 FROM WHAT I JUST SAID. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20 THE COURT: ALL RIGHT. I'M LOOKING AT THE DIAGRAM. IT
21 APPEARS TO HAVE BEEN PREPARED ON MARCH 19TH, '04, [REDACTED]
22 LODGED INTO EVIDENCE ON THAT DATE. [REDACTED]

23 [REDACTED], BASED UPON WHAT I'VE BEEN TOLD, [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 DIAGRAM SHOWS DROPPINGS OF BLOOD IN VARIOUS LOCATIONS, [REDACTED]
[REDACTED]

1 Q. HOW DID YOU DETERMINE THIS WAS A BLOOD TRAIL?

2 A. THERE WERE SPOTS OF BLOODS THAT I FOLLOWED
3 FROM THE AREA WHERE THE BLOOD WAS ON THE CAR UP TO THE
4 WALKWAY WHERE IT TURNS AND GOES TO THE FRONT OF 324 A.
5 AND I FOLLOWED THAT TO WHERE I FOUND THE BLOODY T-SHIRT
6 PIECES.

7 Q. [REDACTED]

8 [REDACTED]
9 [REDACTED] WAS THERE ANY WETNESS OR MOISTURE AT ALL ON THIS
10 WALKWAY?

11 A. THERE WAS.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Q. YOU ALSO PHOTOGRAPHED THIS BLOOD TRAIL?

22 A. I DID.

23 Q. WHERE DID THIS BLOOD TRAIL END?

24 A. IT ENDED INSIDE OF 324 A.
[REDACTED]
[REDACTED]
[REDACTED]

28 Q. WHAT DID YOU FIND AT THE END OF THE BLOOD

35

1 TRAIL --

2 A. A PHONE.

3 Q. -- IF ANYTHING?

4 A. A PHONE.

5 Q. WAS THIS TELEPHONE DAMAGED IN ANY WAY?

6 A. IT APPEARED TO HAVE BEEN DROPPED, BUT IT
7 WASN'T DAMAGED LIKE THE ONE THAT WAS FOUND IN THE GRASS
8 AREA.

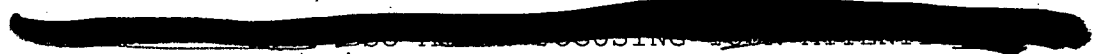
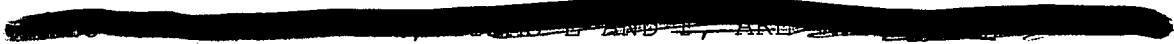












9 Q. WHAT COLOR WAS THE PHONE?

10 A. BLACK.

11 Q. YOU PHOTOGRAPHED THIS BLOOD TRAIL FROM, 



13 A. I DID.

28 Q. AND YOU MENTIONED SOMETHING ABOUT A T-SHIRT.

1 IF WE DO IT THIS WAY.

2 **BY MR. ADAIR:**

3 Q. AGENT, [REDACTED] YOU
4 RECOGNIZE THIS, CORRECT?

5 A. I DO.

6 Q. AND REFERRING TO PICTURE A ON THIS PARTICULAR
7 EXHIBIT, IT DOES SHOW A SECTION LINE, CORRECT?

8 A. YES, IT DOES.

9 Q. AND I BELIEVE THAT YOU INDICATED YESTERDAY
10 THAT ON THAT LAWN SOMEWHERE, YOU RECOVERED A PORTION OF
11 A CORDLESS PHONE, CORRECT?

12 A. I DIDN'T RECOVER IT. I PHOTOGRAPHED IT AND
13 DOCUMENTED ITS LOCATION.

14 Q. OKAY. AND APPARENTLY PEOPLE'S EXHIBIT 128--
15 THIS THE PORTION OF THE PHONE THAT YOU PHOTOGRAPHED?

16 A. YES.

17 Q. DO YOU SEE THE LOCATION ON PHOTO A WHERE THIS
18 PIECE OF PHONE WAS FOUND?

19 A. (INDICATING).

20 Q. OKAY. THAT'S THE PIECE. AND I THINK YOU
21 STATED YESTERDAY THAT THERE WERE A COUPLE OF OTHER
22 SMALLER PIECES NEXT TO IT?

23 A. YES.

24 Q. AND LET ME GET A MARKER SO WE CAN CIRCLE THAT.

25 **MR. ADAIR:** WE'LL USE A RED A MARKER, YOUR
26 HONOR.

27 **BY MR. ADAIR:**

28 Q. IF I COULD GIVE YOU THE RED MARKER, PLEASE.

[REDACTED]

10 Q. DID MR. THOMAS USE FOUL LANGUAGE?

11 A. I'M ASSUMING HE DID.

12 Q. YOU CAN'T REMEMBER?

13 A. HE WAS VERY AGITATED.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 BY MR. TROCHA:

23 Q. [REDACTED] DID

24 HE SAY GOODBYE OR INDICATE --

25 A. [REDACTED]

26 [REDACTED] AND I RECEIVED IMMEDIATE 911 CALLS AFTERWARDS

[REDACTED]

[REDACTED]

1 A. YES.

2 Q. AND THAT THERE WAS AN ODOR OF AN ETHANOL
3 BEVERAGE ON BREATH?

4 A. YES.

5 Q. HE'S NOT TALKING ABOUT ANYBODY EXCEPT
6 MR. THOMAS, CORRECT?

7 A. CORRECT.

8 Q. AND ETHANOL BEVERAGE BASICALLY IS ALCOHOL?

9 A. YES.

10 Q. SO THE LONG AND SHORT OF IT IS THAT IT APPEARS
11 MR. THOMAS HAD BEEN DRINKING?

12 A. HE STATED THAT HE DRANK A COUPLE OF BEERS
[REDACTED]

14 Q. DO YOU HAVE -- HAVE YOU BEEN TRAINED AS TO THE
[REDACTED]

16 A. I'VE BEEN TRAINED AS FAR AS THE INJURIES, YES.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 Q. THANK YOU VERY MUCH, DOCTOR.

22 THE COURT: ANY REDIRECT?

23 MR. TROCHA: NO, YOUR HONOR. THANK YOU.

24 THE COURT: ALL RIGHT. DOCTOR, YOU ARE

25 EXCUSED. THANK YOU VERY MUCH.

26 (THE WITNESS EXITS THE COURTROOM.)
[REDACTED]
[REDACTED]

1 BUT THE CLEAREST EXAMPLE WOULD BE WHERE LET'S SAY
2 MR. THOMAS IS IN THE CLOSET WITH THE STICK CONCEALING A
3 KNIFE. THE OFFICERS DID SEE AND REPORTED IN THEIR
4 REPORTS THAT MR. THOMAS WAS IN THE CLOSET. HE HAD THE
5 STICK. AFTER HE LEFT THEY LOOKED AT THE STICK CLOSELY.
6 THE STICK CONCEALED A KNIFE. THEY'RE REPORTING DIRECTLY
7 WHAT THEY OBSERVED IN THE POLICE -- OR THEY'RE REPORTING
8 IN THEIR POLICE REPORT.

9 THE OTHER THING IS THERE WAS ANOTHER
10 INCIDENT -- DIFFERENT OFFICERS, I BELIEVE -- WHERE THE
11 OFFICER HEARD MR. THOMAS ON THE TELEPHONE MAKE THE
12 THREATS. SO IT'S NOT SOMEBODY REPORTING TO THEM. THEY
13 THEMSELVES -- OR ONE OF THE OFFICERS, HIMSELF OR
14 HERSELF, HEARD THE THREATS BEING MADE BY MR. THOMAS TO
15 MELANIE CLARK.

16 THE COURT: ALL RIGHT. [REDACTED]
17 [REDACTED] -- I UNDERSTAND YOUR POINT, [REDACTED]
18 [REDACTED] IF WE
19 HAVE THE OFFICERS, CERTAINLY THEY CAN TESTIFY, [REDACTED]
[REDACTED]

21 MR. ADAIR: [REDACTED] YOUR
22 HONOR, [REDACTED] IT IS
23 MATERIAL THAT IS EXTREMELY IMPORTANT TO MR. BURTON'S
24 DEFENSE. WE'RE ASKING THAT THAT BE RECEIVED PURSUANT TO
25 HIS CONSTITUTIONAL RIGHTS TO PRESENT A DEFENSE. WE
26 BELIEVE THAT'S SUPPORTED BY BOTH THE CALIFORNIA
27 CONSTITUTION AND THE U.S. CONSTITUTION -- [REDACTED]
[REDACTED]

EVIDENCE. I'M NOT SURE WHERE THIS

7-22-05

~~TOP SECRET~~

~~CONFIDENTIAL~~

~~TOP SECRET FRODO BAGGINS~~

10:33 am Court is again in session with counsel as previously noted, the defendant, the investigating officer. The defense renews their motion to dismiss the case based on destruction of evidence. The motion is **DENIED.**

The following people's exhibits are marked for identification:

_____d

2018-01-10 10:10:10

SECRET

... ..

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

SECRET

1.

100-443887-100

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

10 - Mr. Thomas' gray and black sweat pants – blood

TRIAL MINUTES



(49)

... ..

TRIAL MINUTES

1 RECALLING AGENT BENNETT FROM YESTERDAY.

2 (THE NEXT WITNESS ENTERS THE COURTROOM.)

3 THE COURT: GOOD MORNING, SIR.

4 AGENT JOHN BENNETT,

5 CALLED BY THE PEOPLE, HAVING BEEN PREVIOUSLY SWORN,

6 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

7 THE WITNESS: MORNING.

8 THE COURT: PLEASE REMEMBER YOU'RE STILL UNDER
9 OATH FROM YESTERDAY.

10 THE WITNESS: YES.

11 THE COURT: AND I THINK WE'RE AT THE POINT OF
12 CROSS-EXAMINATION.

13 MR. ADAIR: YES, YOUR HONOR. THANK YOU.

14 CROSS-EXAMINATION

15 BY MR. ADAIR:

16 Q. AGENT BENNETT, GOOD MORNING.

17 A. GOOD MORNING.

18 Q. IF I GATHER CORRECTLY, YOU'RE NOT A FORENSIC
19 EXPERT AS FAR AS, SAY, [REDACTED] -- WELL,

20 [REDACTED] IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 Q. OKAY. AND LET'S SEE. YESTERDAY YOU WERE
26 TALKING -- EXCUSE ME JUST A MOMENT.

27 THE COURT: DO YOU WANT TO USE THE STAND?

28 MR. ADAIR: PERHAPS THIS IS BEST, YOUR HONOR,

1 AGAIN THAT SOME OF THESE SHELL CASINGS THAT WE CAN SEE
2 [REDACTED] THEY ARE SLIGHTLY DAMAGED AND SOMEWHAT
3 SMUSHED (SIC), FOR LACK OF A BETTER WORD. ASIDE FROM
4 THE EIGHT YOU FOUND HERE, DID YOU FIND ANY OTHER SHELL
5 CASINGS, [REDACTED]

6 A. NO.

7 Q. DID YOU FIND ANY OVER IN THE GUTTERS OF EITHER

8 [REDACTED]
9 A. NO.

10 Q. THESE ARE THE ONLY SHELL CASINGS THAT WERE
11 FOUND WITHIN THIS ENTIRE BLOCK, CORRECT?

12 A. CORRECT.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]

4

8

9

10

11

THE COURT: 08, I BELIEVE.

12

* MR. TROCHA:

14

OUR OFFICE DIDN'T FILE ANYTHING.

15

TO BE SEEN INSIDE THIS COURTROOM.

16

THE COURT: ALL RIGHT.

18

1 THAT HE ACTED IN CONFORMITY WITH SUCH CHARACTER ON
2 MARCH 19TH, 2004." I THINK THAT'S APPROPRIATE. I WOULD
3 PUT THAT IN RIGHT AFTER THE CONVICTION INSTRUCTIONS.

4 WHAT I'M NOT SURE IS APPROPRIATE IS THE OTHER
5 ONE I CRAFTED RELATING TO "EVIDENCE" -- AGAIN,
6 MR. THOMAS' ACTS -- "TO THE EXTENT IT WAS SHOWN THAT
7 DEFENDANT WAS AWARE OF SUCH ACTS MAY BE CONSIDERED AS
8 RELEVANT TO HIS ACTUAL OR REASONABLE BELIEF." [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12 ON THE DAY IN QUESTION, [REDACTED]
[REDACTED]

14 MR. ADAIR, WHAT'S YOUR THOUGHT?

15 MR. ADAIR: I WOULD REQUEST THAT. AS FAR
16 AS -- THERE WERE CERTAIN THINGS THAT WERE STATED TO HIM
17 THAT CAUSED HIM, [REDACTED], TO BE
18 FRIGHTENED. AND WE JUST DON'T HAVE THE DETAILS OF WHAT
19 THOSE WERE IN FRONT OF THE JURY.

20 ONE OF THE THINGS I STILL HAVE TO DO -- [REDACTED]
[REDACTED]
[REDACTED]

23 SOME EVIDENCE IN THERE. [REDACTED]

24 IN THERE IS, [REDACTED] A LIST OF CASES AGAINST MR. THOMAS
25 THAT MY CLIENT HAS RESERVED. I WOULD BE INTRODUCING
26 THAT AT 1:30, I SUPPOSE, BUT WE'VE TALKED ABOUT GOING
27 INTO THE BACKPACK, BUT I JUST HAVEN'T HAD THE TIME TO DO
28 IT.

(48)

1 THE ORIGINALS THAT WERE TAKEN OUT OF MR. BURTON'S
2 ^{ALLEGED} BACKPACK. THEY INDICATE -- [REDACTED]
3 -- AT LEAST MOST OF THEM ARE RESTRAINING ORDERS, IN
4 FACT, [REDACTED]

5 WE WOULD BE INTRODUCING ALL OF THOSE INTO
6 EVIDENCE TO SHOW SOME KNOWLEDGE BY MR. BURTON OF THOMAS'
7 TENDENCIES TOWARDS VIOLENCE AND ABUSE.

8 THE COURT: ALL RIGHT. AND FOR THE RECORD,
[REDACTED]
[REDACTED]

11 MR. TROCHA, YOUR RESPONSE?

12 MR. TROCHA: [REDACTED]
[REDACTED]
[REDACTED]

15 ORDER IN CONJUNCTION WITH THE DOMESTIC VIOLENCE CASE OF
16 2000 -- THE INCIDENT FROM 2000.
[REDACTED]
[REDACTED]

19 THE EFFECT THOSE DOCUMENTS HAD, [REDACTED], UPON HIS PSYCHE
[REDACTED]
[REDACTED]

22 WANTS TO BRING IN THESE DOCUMENTS -- [REDACTED]
23 -- IN ORDER FOR THE
24 JURY TO ACCEPT THAT HE THOUGHT OF THESE SAME DOCUMENTS
[REDACTED]
[REDACTED]

27 AND HE SHOULD HAVE SEEN THESE DOCUMENTS PROBABLY AT THE
28 BEGINNING OF TRIAL AS OPPOSED TO RIGHT NOW. THEY ARE
Admitted (19)

1110

1 DOCUMENTS. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5 AGAIN, THE DEFENDANT, SINCE HE'S NOW CLAIMING
6 HE KNEW OF THESE DOCUMENTS, SHOULD HAVE BEEN AVAILABLE
[REDACTED]
[REDACTED]

9 TIME, BUT APPARENTLY THE EFFECT, [REDACTED]
[REDACTED]
[REDACTED]

12 MR. ADAIR: YOUR HONOR, [REDACTED]
13 [REDACTED] THEY'RE BEING
14 OFFERED TO SHOW THAT THIS IS INFORMATION THAT MR. BURTON
15 WAS AWARE OF. [REDACTED]
16 HAD THE DOCUMENTS APPARENTLY TAKEN FROM A COURT FILE --
[REDACTED]

18 [REDACTED] AND I
19 THINK IT'S CERTAINLY RELEVANT EVIDENCE AS TO HIS STATE
20 OF MIND.
[REDACTED]

21 THE COURT: ALL RIGHT. WELL, I'VE LOOKED AT
22 THE DOCUMENTS. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

27 [REDACTED] PHOTOCOPIES OF
28 INCIDENTS THAT OCCURRED IN 2000 AND 1997. IT WOULD

1111

1 BE -- [REDACTED]
2 WERE IN THE BACKPACK. [REDACTED]
3 EXTENT MR. BURTON WAS AWARE OF THEM. [REDACTED]
4 [REDACTED], IN THAT THEY'RE, YOU
5 KNOW, [REDACTED]
6 OCCURRED QUITE SOME TIME BEFORE. WHEN MS. SANDERS WAS
[REDACTED]

8 [REDACTED] IT WILL WOULD NOT BE
9 RECEIVED.

10 YOU CAN HAVE IT MARKED AS DEFENSE'S NEXT IN
11 ORDER FOR THE RECORD, BUT NOT AS ADMISSIBLE EVIDENCE.

12 MR. ADAIR: WELL, AMONG OTHER THINGS, IT
13 INDICATES THAT MR. BURTON WOULD KNOW MR. THOMAS WAS ON
14 PAROLE. I THINK THAT'S RELEVANT INFORMATION INDICATING
15 THAT A PERSON MIGHT BELIEVE THAT MR. THOMAS WAS
16 DANGEROUS, THAT HE HAD BEEN TO PRISON, [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED] BUT WHETHER MR. BURTON WAS AWARE OF
20 SOME OF THOSE THINGS OR THE ALLEGATIONS AND HAD A
21 REASONABLE FEAR OF MR. THOMAS.

22 THE COURT: WELL, AGAIN, A PERSON COULD BE ON
[REDACTED]

24 BE VIOLENCE. AND, [REDACTED], I THINK IT'S
25 [REDACTED] WHAT MR. BURTON
26 KNEW ABOUT THEM, [REDACTED]

27 SO IT WILL BE MARKED AS DEFENSE F FOR THE
28 RECORD, BUT NOT RECEIVED.

(51)

1 (DEFENSE EXHIBIT F, [REDACTED])
2 RESTRAINING ORDER, WAS MARKED FOR
3 IDENTIFICATION.)

4 **THE COURT:** ALL RIGHT. THEN I THINK WE'RE
5 READY TO -- AS SOON AS THE JURY HAS THEIR QUICK BREAK,
6 WE CAN BRING THEM IN TO DO INSTRUCTIONS.

7 **MR. ADAIR:** I'LL EXCUSE MY INVESTIGATOR THEN,
8 YOUR HONOR, TO TAKE THE WITNESS HOME.

9 **THE COURT:** ALL RIGHT.

10 **MR. ADAIR:** AND MY CLIENT NEEDS TO USE THE
11 RESTROOM.

12 **THE COURT:** OKAY. WE SHOULD DO THAT THEN
13 BEFORE WE BRING THE JURY IN.

14 **MR. ADAIR:** I'M SORRY. I THOUGHT WE NEEDED TO
15 GO THROUGH THE OTHER WHILE HE WAS HERE.

16 (RECESS FROM 2:40 P.M. TO 2:50 P.M.)

17 (AT 2:50 P.M. THE JURY ENTERED THE COURTROOM
18 AND THE FOLLOWING PROCEEDINGS WERE HAD:)

19 **THE COURT:** OUR JURY MEMBERS HAVE RETURNED.
20 COUNSEL AND DEFENDANT ARE PRESENT.

21 LADIES AND GENTLEMEN, YOU'VE HEARD ALL THE
22 EVIDENCE NOW, AND IT'S MY DUTY TO INSTRUCT YOU ON THE
23 LAW THAT APPLIES TO THIS CASE. THE LAW REQUIRES THAT I
24 READ THESE INSTRUCTIONS TO YOU. YOU WILL HAVE THESE
25 INSTRUCTIONS IN WRITTEN FORM IN THE JURY ROOM WITH A FEW
26 EXTRA COPIES SO YOU CAN REFER TO THOSE DURING YOUR
27 DELIBERATIONS. YOU DO NOT NEED TO TAKE NOTES AT THIS
28 TIME.

SCE238643 Burton, Eric

0380
7-27-05

Defense Exhibit F – application for restraining order Ms. Sanders obtained against Mr. Thomas, marked for identification.

2:35 pm Court is in recess.

2:50 pm Court is again in session with all counsel as previously noted, the defendant and all jurors are present. The Court instructs the jury on the laws applicable to this case.

3:44 pm The jurors are admonished and excused for the afternoon recess. Court is in recess.

3:59 pm Court is again in session with all counsel present as previously noted, the defendant and all jurors are present. The People present closing arguments.

4:30 pm The jurors are admonished and excused for the evening and ordered to return on July 28, 2005 at 9:00 am in department 10.

Counsel are ordered to return on July 28, 2005 at 8:45 in department 10.

The defendant is remanded to the custody of the Sheriff with bail set in the amount of \$500,000.00 and shall be produced on July 28, 2005 at 9:00 am in department 10. Court is adjourned.

-nl-

1 MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR?

2 THE COURT: YES.

3 MR. ADAIR: COULD WE APPROACH SIDEBAR, YOUR
4 HONOR?

5 THE COURT: YES. WITH THE REPORTER?

6 MR. ADAIR: YES.

7 THE COURT: ALL RIGHT.

8 (THE COURT, BOTH COUNSEL, AND THE COURT
9 REPORTER EXIT THE COURTROOM.)

10 (THE FOLLOWING PROCEEDINGS WERE HEARD AT
11 SIDEBAR:)

12 MR. ADAIR: I HAVE THE RECORD CONCERNING THAT
13 INCIDENT.

14 THE COURT: WHAT'S THE TIME FRAME WE'RE
15 TALKING ABOUT?

16 MR. ADAIR: WE'RE TALKING ABOUT -- LET ME
17 SEE -- 2001, 2002.

18 THE COURT: AND IS THIS ANY PART OF WHAT HE
19 WAS CONVICTED FOR IN '02?

20 MR. ADAIR: HE WAS CONVICTED IN '96.

21 THE COURT: NO. WITH MS. SANDERS DIDN'T HE
22 HAVE A CONVICTION --

23 MR. TROCHA: IT WAS AN AMERICAN LEGION
24 INCIDENT.

25 MR. ADAIR: WAIT. WHAT I HAVE HERE --

26 THE COURT: SO IS THIS SOMETHING BEFORE OR
27 AFTER THE AMERICAN LEGION INCIDENT?

28 MR. ADAIR: BEFORE.

1 ANYTHING OF THAT NATURE IN. IT'S LIKE THE TRO.

2 THE COURT: WELL, I'M NOT EVEN SURE HOW WE
3 WOULD KNOW THAT IT'S HIS BACKPACK. [REDACTED]

4 [REDACTED] THE OFFICERS FOUND A BACKPACK. WE DON'T
5 HAVE TESTIMONY AS TO WHOSE IT IS OR ANYTHING. SO I
6 THINK IT WOULD BE DIFFICULT. [REDACTED] *Ever says*

10 THE COURT: OKAY. WELL, IF IT FALLS ALONG THE
11 LINES OF THE DECLARATIONS FILED WITH THE TRO, IT WAS

15 MR. TROCHA: I MEAN, ESSENTIALLY, IT'S GOING
16 TO PROVE A STATEMENT THAT CAN'T BE CROSS-EXAMINED, [REDACTED]

19 MR. ADAIR: FOR THE PROOF OF HIS --

25 PROBLEMS.

26 MR. ADAIR: I WOULD LIKE TO INTRODUCE A COPY
27 OF THE RESTRAINING ORDER.

28 THE COURT: THE ORDER?

1 **MR. ADAIR:** THE ORDER OR EVEN IF YOU WANT TO
2 TAKE JUDICIAL NOTICE THAT THERE WAS A RESTRAINING ORDER
3 ISSUED IN THIS CASE ON A CERTAIN DATE.

4 **THE COURT:** IT'S NOT REALLY IN DISPUTE.
5 DO YOU HAVE ANY OBJECTION TO THAT?

6 **MR. TROCHA:** WELL, WE'RE NOT TRYING TO PROVE
7 THAT MR. THOMAS VIOLATED A RESTRAINING ORDER. ~~AND I~~

8 ~~WAS NOT TRYING TO PROVE THAT THE ORDER WAS ACTUALLY~~
9 ~~THERE. HE HAD KNOWLEDGE THERE WAS AN ORDER; AND THAT~~

10 ~~FACT THAT THERE IS NO ORDER AND THE COURT~~
11 ~~IS NOT A JUDGE.~~

12 **THE COURT:** I CAN TAKE JUDICIAL NOTICE THAT
13 THAT WAS ISSUED ON THAT DATE. I'LL DO THAT.

14 **MR. ADAIR:** THANK YOU, YOUR HONOR.

15 **THE COURT:** OKAY. THANK YOU. BYE.

16 (AT 12:00 P.M. THE NOON RECESS WAS TAKEN UNTIL
17 1:30 P.M. OF THE SAME DAY.)

18

19

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1 EL CAJON, CALIFORNIA; WEDNESDAY, 7/27/05; 1:34 P.M.

2
3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
4 COURT OUT OF THE PRESENCE OF THE JURY:)

5 **THE COURT:** LET'S GO ON THE RECORD. COUNSEL
6 AND DEFENDANT ARE PRESENT. THE JURY IS NOT.

7
8
9
10 **MR. TROCHA:** RIGHT.

11 **THE COURT:** ALL RIGHT. SO WE'LL DO THAT AFTER
12 THEY REST.

13 ON THE JUDICIAL NOTICE, I REVIEWED THE FILE.
14 WOULD IT BE SIMPLY ADEQUATE TO NOTE UNDER THE CASE
15 NUMBER THAT ON SUCH AND SUCH A DATE AN ORDER FOR
16 INJUNCTION PROHIBITING HARASSMENT WAS ISSUED BY THE
17 COURT AGAINST MR. THOMAS PROTECTING MR. BURTON?

18 **MR. ADAIR:** CORRECT.

19 **THE COURT:** THAT'S ALL YOU NEED?

20 **MR. ADAIR:** THAT WOULD BE FINE, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. I'LL DO THAT. ~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

1 ~~THE COURT: I THINK THAT MR. BURTON'S ENTITLED TO, IN~~
2 ~~PRESENTING HIS DEFENSE, AND CERTAINLY PROSECUTION CAN MAKE~~

3 ~~THAT~~ BUT I THINK THAT MR. BURTON'S ENTITLED TO, IN
4 PRESENTING HIS DEFENSE, ~~AND CERTAINLY PROSECUTION CAN MAKE~~
5 SELF-DEFENSE THEORY. THAT IT IS RELEVANT THAT HE TOLD
6 HIS MOTHER AT LEAST A MONTH BEFOREHAND THAT HE HAD SOME
7 FEAR BASED ON THREATS. ~~AND CERTAINLY PROSECUTION CAN MAKE~~

~~THAT IT IS RELEVANT THAT HE TOLD HIS MOTHER AT LEAST A MONTH BEFOREHAND THAT HE HAD SOME~~
9 ADMISSIBLE.

10 SO IS THAT CLEAR ON THAT ISSUE?

11 MR. ADAIR: YES, YOUR HONOR.

12 MR. TROCHA: YOUR HONOR, THE ISSUE I HAVE
13 THOUGH IS THAT THE DEFENSE IS THEN GOING TO TURN AND
14 ARGUE THESE THREATS HAPPENED BECAUSE THE DEFENDANT TOLD
15 HIS MOM ABOUT IT.

16 THE COURT: WELL, NO, THEY'RE NOT, BECAUSE I'M
17 GOING TO INSTRUCT THE JURY THAT IT'S NOT BEING ADMITTED
18 FOR ITS TRUTH. AND I'LL INSTRUCT THEM ON THAT AT THE
19 TIME THE TESTIMONY IS PRESENTED AND I'LL INSTRUCT THEM
20 AGAIN AT THE CONCLUDING INSTRUCTION. AND IF THAT
21 ARGUMENT'S MADE DURING ARGUMENT, YOU CAN OBJECT AND I'LL
22 SUSTAIN IT.

23 MR. TROCHA: ~~THE COURT: I THINK THAT MR. BURTON'S ENTITLED TO, IN~~ -- I MEAN,

24 ~~JUST HOW MUCH ARE WE GOING TO GET INTO THE JURY'S MINDS?~~

25 ~~THAT IT IS RELEVANT THAT HE TOLD HIS MOTHER AT LEAST A MONTH BEFOREHAND THAT HE HAD SOME~~ AND IT'S ESSENTIALLY THE
26 DEFENDANT'S TESTIMONY THROUGH HIS MOTHER, WHICH THERE'S
27 NO WAY I CAN EFFECTIVELY CROSS-EXAMINE HER ON THAT
28 BECAUSE -- "WELL, THAT'S WHAT ERIC TOLD ME," ~~AND CERTAINLY PROSECUTION CAN MAKE~~

1 ~~THE COURT: AND THERE WAS A CAMERA THAT WAS USED TO TAKE~~
 2 ~~THE PHOTOGRAPHS. I AM NOT AWARE OF ANY OTHER PUBLICITY ABOUT THIS~~
 3 ~~CASE. MAYBE THERE HAD BEEN AT THE TIME, BUT THE COURT IS NOT~~
 4 ~~AWARE OF IT. AT THIS POINT, IT IS NOT KNOWN TO THE COURT.~~
 5 ~~THE COURT ESTABLISHED SOMETHING THAT THEY WOULD HAVE GROUNDS,~~
 6 ~~YOU CAN RAISE THE ISSUE. YOU HAVE THE EVIDENCE.~~

7 ALL RIGHT. ANYTHING ELSE?

8 MR. ADAIR: YOUR HONOR, I -- ~~MAYBE I COULD HAVE DONE THIS~~
 9 ~~IN A WAY THAT I COULD HAVE WITH THE PROSECUTOR, AND~~
 10 ~~NO NOT. BUT THERE SUPPOSEDLY WAS A CAMERA THAT WAS BEING USED~~
 11 ~~BY EITHER THE -- EITHER MR. THOMAS IN THIS CASE OR MS. SANDERS,~~
 12 ~~WHO IS ONE OF THE WITNESSES, [REDACTED]~~

13 ~~[REDACTED]~~
 14 *finger prints* ~~[REDACTED]~~, WE'RE ASKING THAT
 15 WE'D BE GIVEN A CHANCE TO EXAMINE IT. ~~[REDACTED]~~

16 ~~[REDACTED]~~
 17 ~~[REDACTED]~~
 18 ~~[REDACTED]~~
 19 THE COURT: ~~[REDACTED]~~
 20 IN HIS PRELIMINARY HEARING?

21 MR. ADAIR: I BELIEVE THAT'S CORRECT, YOUR HONOR.

22 THE COURT: WHAT'S YOUR RESPONSE ON THAT?

23 MS. HANNAH: YOUR HONOR, I'VE HAD AN OPPORTUNITY TO TALK
 24 TO MR. THOMAS, ~~WHO IS PRESENT IN THE COURTROOM AND IS THE WITNESS~~
 25 ~~[REDACTED]~~. HE SAYS THAT HE DID USE A CAMERA, ~~[REDACTED]~~
 26 ~~[REDACTED]~~. HE SAID HE JUST USED IT TO KIND OF SCARE

27 ~~[REDACTED]~~
 28 THE COURT: I THINK HE TESTIFIED THAT IT WAS DIGITAL. ~~[REDACTED]~~

for finger prints ~~[REDACTED]~~

1 THE COURT: OKAY.

2 MR. ADAIR: AND IT INDICATES THERE ARE PRIOR
3 DOMESTIC VIOLENCE REPORTS ON FILE WITH THE EL CAJON
4 POLICE DEPARTMENT. THERE IS ONE ON MARCH 4TH, 2001, AND
5 ONE ON JANUARY 20TH OF 2002.

6 THE COURT: BUT WE DON'T KNOW WHAT THE REPORTS
7 SAY OR WHAT THE CONTENT WAS?

8 MR. TROCHA: NO.

9 THE COURT: ALL RIGHT. WHAT'S YOUR RESPONSE?

10 MR. TROCHA: MY RESPONSE, ~~NUMBER ONE, WE~~ X

~~11 WE HAVE TWO DV INCIDENTS IN THE RECORD.~~

12 ~~NUMBER TWO, A STATEMENT FROM THE EL CAJON~~

13 ~~POLICE DEPARTMENT THAT WAS BUSHING HER TO~~

14 BEGIN WITH AND IT'S MAKING MR. THOMAS BE TERRIBLE --

15 ~~HE WANTED TO ASK ABOUT MR. THOMAS' PRIOR INCIDENTS, WHY~~

16 ~~HE SHOULD HAVE DONE SO IN THE ENTIRE HOUR AND A HALF ON~~

17 ~~CROSS.~~

18 THE COURT: ~~I THINK PARTICULARLY WITHOUT EVEN~~

19 ~~HAVING THE REPORTS AND NOT KNOWING WHAT THEY CONTAIN.~~

20 THERE'S REFERENCE TO A DV INCIDENT. ~~IT CAN BE A LOT~~

21 OF THINGS, PHYSICAL, VERBAL, ~~OR BOTH.~~

22 HE SAID THEY ARGUED. ~~AND NOT ARGUING~~

23 EXACTLY WHAT THE INCIDENT WAS, ~~I THINK IT'S SPECULATIVE.~~

24 ~~WE DON'T REALLY HAVE A RIGHT AND IT'S ONLY~~

25 ~~PREJUDICIAL. IT'S TOO MUCH CONSUMPTION OF TIME UNDER~~

26 352.

27 ~~MR. ADAIR, WHAT I WOULD DO THEN IS SEE IF I~~

28 ~~CAN GET THE REPORTS IN THE MEAN TIME.~~

EL CAJON, CALIFORNIA; MONDAY, 7/25/05; 1:35 P.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: WE'RE ON THE RECORD. COUNSEL AND DEFENDANT ARE PRESENT. JURY IS NOT PRESENT.

I'VE REVIEWED THE LAW ON A FEW OF THE ISSUES WE DISCUSSED BEFORE OUR BREAK.

DID EITHER COUNSEL WISH TO MAKE ANY ADDITIONAL COMMENTS? STARTING FIRST WITH THE ISSUE OF 1250 OF THE EVIDENCE CODE. ANY ADDITIONAL ARGUMENTS?

MR. ADAIR: IF I COULD HAVE A MOMENT.

IF YOU'RE TALKING ABOUT SPECIFICALLY THE BUSINESS RECORDS EXCEPTION OR --

THE COURT: OR THAT AS WELL. ANY OF THE ARGUMENTS THAT YOU MADE BEFOREHAND.

MR. ADAIR: I DON'T -- I WAS LOOKING AT ALR

AGAINST THE ADMISSION OF POLICE REPORTS. A LOT OF IT HAS TO DO WITH THE RELIABILITY OF THE POLICE REPORTS.

BY THE WAY, THE FIRST THING PERHAPS TO KEEP IN MIND IS THAT GENERALLY POLICE REPORTS DON'T COME IN AGAINST THE DEFENDANT BECAUSE IT'S A DENIAL OF THE 6TH AMENDMENT RIGHT TO CROSS-EXAMINE AND CONFRONT WITNESSES. ANOTHER REASON WHY POLICE REPORTS DON'T COME IN IS BECAUSE THEY MAY NOT BE TRUSTWORTHY. THEY MAY CONTAIN THE OBSERVATIONS AND OPINIONS OF PEOPLE OTHER THAN THE

ALLEGED WITNESS LIST SENT TO PETITIONER BY MR. ADAIR
APPROX 9/07

BONNIE DUMANIS
District Attorney
KRISTIAN P. TROCHA
Deputy District Attorney
State Bar Number 216985
East County Branch
250 E. Main Street, Suite 500
El Cajon, CA 92020
(619) 441-4544

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

CT. No. SCE238643
DA No. MAJ339

v.

ERIC WILTON BURTON,

Defendant.

PEOPLE'S WITNESS LIST

Date: July 17, 2005
Time: 8:45 a.m.
Dept: 11

Comes now the plaintiff, the People of the State of California, by and through their attorneys, BONNIE DUMANIS, District Attorney, KRISTIAN P. TROCHA, Deputy District Attorney, and respectfully submits the following PEOPLE'S WITNESS LIST.

I.

WITNESS LIST

The People submit the following list of potential witnesses:

- 1) Officer R. Gonsalves, El Cajon Police Department
- 2) Officer D. Holmes, El Cajon Police Department
- 3) Officer D. Cline, El Cajon Police Department
- 4) Officer Y. Mendoza, El Cajon Police Department
- 5) Sergeant J. Redman, El Cajon Police Department
- 6) Sergeant Coit, El Cajon Police Department
- 7) Agent S. Kirk, El Cajon Police Department

- 8) Agent J. Bennett, El Cajon Police Department
- 9) Kendall Hildenbrand, El Cajon Police Department
- 10) Steven Dowell, El Cajon Police Department Crime Laboratory
- 11) Dr. Herman Hammerstead, MD, Sharp Memorial Hospital
- 12) Dr. Karli J. Kenfield, MD, Sharp Memorial Hospital
- 13) Al Culbertson, District Attorney Investigator
- 14) Salinanthan Thomas, ^{ALLEGED} victim
- 15) Dreyona Burton, ^{ALLEGED} victim (minor)
- 16) Angela Sanders, witness
- 17) Diane McKenney, witness
- 18) Mary Jo Bettcher, witness
- 19) Clyde Owens, Jr., witness
- 20) Shane Colbert, witness (minor)
- 21) Teresa Colbert, witness

Dated: July 17, 2005

Respectfully Submitted,

BONNIE DUMANIS
District Attorney

By:


KRISTIAN P. TROCHA
Deputy District Attorney

Attorneys for Plaintiff

1 YOU ARE TO PAY A RESTITUTION FINE PURSUANT TO
2 PENAL CODE 1202.4(B) IN THE AMOUNT OF \$10,000 TO BE PAID
3 FORTHWITH OR AS PROVIDED IN PENAL CODE 285.5. AND PAY
4 AN ADDITIONAL RESTITUTION FINE PURSUANT TO PENAL CODE
5 1202.45 OF \$10,000 TO BE STAYED UNLESS PAROLE IS
6 REVOKED.

7 YOU ARE TO PAY RESTITUTION PURSUANT TO PENAL
8 CODE 1202.4(F) TO SALINATHAN THOMAS AND KIAH, K-I-A-H,
9 MINCEY, SHOULD ADDITIONAL LOSSES BE REPORTED.

10 AND TO PAY \$17,838.57 TO THE VICTIM'S
11 COMPENSATION PROGRAM, CLAIM NO. 821546, SUBJECT TO
12 MODIFICATION BY THE COURT TO BE PAID FORTHWITH OR AS
13 PROVIDED IN PENAL CODE 2085.5.

14 THE COURT WILL NOT ORDER RESTITUTION AS TO
15 DREONA BURTON, AS THERE WAS AN ACQUITTAL ON COUNT 4.

16 YOU HAVE THE RIGHT TO APPEAL THIS JUDGMENT.

17 YOU MUST FILE A NOTICE OF APPEAL WITHIN 60
18 DAYS OF SENTENCING.

19 YOU HAVE THE RIGHT TO APPOINTED COUNSEL ON
20 APPEALS.

21 YOU ARE REMANDED TO CUSTODY OF THE SHERIFFS TO
22 BE DELIVERED TO THE DEPARTMENT OF CORRECTIONS UPON
23 PREPARATION OF THE ABSTRACT.

24 IS THERE ANYTHING FURTHER?

25 **MR. TROCHA:** NO, YOUR HONOR.

26 **THE COURT:** THANK YOU. WE'LL BE IN A BRIEF
27 RECESS.

28 (CONCLUSION OF PROCEEDINGS.)

(64)

1 REQUIRE THAT THERE BE ANYBODY -- I DON'T KNOW IF THE
2 OFFICER'S AVAILABLE, BUT THE STATUTE ITSELF COVERS NOT
3 JUST, I GUESS, DOMESTIC VIOLENCE REPORTS, BUT IT
4 INCLUDES LIKE DIARY ENTRIES. APPARENTLY THE STATUTE IS
5 PASSED BECAUSE OF THE OJ SIMPSON CASE WHERE THE DIARY
6 ENTRIES OF THAT CASE WERE KEPT OUT OF THE CRIMINAL CASE.
7 SO APPARENTLY IT'S TO COVER NOT JUST POLICE REPORTS BUT
8 ANY KIND OF WRITINGS THAT MIGHT INDICATE THE VIOLENCE
9 INFLECTED UPON A VICTIM.

10 THE COURT: ALL RIGHT.

11 MR. ADAIR: BUT WE'LL TRY TO FIND THE OFFICER.

12 THE COURT: OKAY. MR. TROCHA, ANYTHING
13 ADDITIONAL THAT YOU WANTED TO SAY AS TO THE ISSUES
14 RELATING TO THE POLICE REPORTS AND ALSO DEFENDANT'S

15 ~~STAYING TO THE POINT~~

16 MR. TROCHA: YES, YOUR HONOR.

17 FIRST, WITH THE POLICE REPORTS, MY ORIGINAL
18 COMMENTS CAN STAND ON THEM IN THAT REGARD. BUT TO ADD
19 TO IT THE MAIN PROBLEM WE ALSO HAVE WITH THESE POLICE
20 REPORTS GOES TO THE TRUSTWORTHINESS PRONG SHOULD THE
21 COURT EVEN BEGIN TO SEE THEM AS BUSINESS RECORDS, WHICH
22 THEY AREN'T. THEY AREN'T RECORDS FROM A BUSINESS. YES,
23 THE POLICE ARE MANDATED TO TAKE REPORTS, BUT THEY'RE NOT
24 BUSINESS RECORDS OR OFFICIAL RECORDS IN THE FACT THAT
25 THEY'RE MADE IN PREPARATION OF TRIAL. THEY'RE ALSO
26 STOCKED FULL OF POLICE OFFICERS' OPINIONS. THOSE
27 OPINIONS ARE BASED OFF OF THIRD PARTY HEARSAY.

28 IN THIS CASE WE CAN'T TEST THE HEARSAY

1 DECLARANT AT ALL BECAUSE THEY WON'T BE IN COURT. IN
2 ESSENCE, THE POLICE OFFICER SHOULD BE PRESENT IN COURT
3 FOR THE PEOPLE TO CROSS-EXAMINE IN THAT REGARD.

4 ~~I HAVE A PIECE OF PAPER IN FRONT OF ME WITH A~~
5 ~~BUNCH OF OPINIONS FROM 1992, WHICH, IN ADDITION, WERE~~
6 ~~REVIEWED BY A DISTRICT ATTORNEY FROM MY OFFICE AT THAT~~
7 ~~TIME AND FOUND NOT TO BE CREDIBLE ENOUGH TO ISSUE A~~
8 ~~CRIMINAL OFFENSE. NOW THE POLICE HAVE NAMES TO PRESENT THEM~~
9 ~~IN AND TELL THEM TO SHOW THAT THESE THINGS ACTUALLY DID~~

10 ~~HAppen WHEN MR. BURTON WAS THERE THEN,~~ NEVER FACED
11 CHARGES UPON THEM, AND FROM THE BEST I CAN TELL, WAS
12 NEVER EVEN ARRESTED. I THINK THAT'S COMPLETELY
13 UNRELIABLE HEARSAY IN THIS CASE. *use this one?*

14 THIS IS NOT A BUSINESS RECORD EXCEPTION. IT'S
15 NOT EVEN CLOSE. IT WOULD BE AS IF SOMEONE FROM MY
16 OFFICE WROTE THEIR OPINIONS AS TO MR. BURTON -- OR, IN
17 ESSENCE, JUST PULL UP A BUNCH OF POLICE REPORTS IN THIS
18 CASE WITHOUT PRESENTING ANY WITNESSES. MR. BURTON
19 WOULDN'T HAVE ANY CHANCE TO CROSS-EXAMINE THOSE
20 WITNESSES. BUT BECAUSE WE THINK THEY'RE RELIABLE, WE'RE
21 GOING TO ADMIT THEM INTO EVIDENCE. ADDITIONALLY, THE
22 FACT THAT THEY'RE USED FOR IMPEACHMENT PURPOSES FOR

23 ~~THE FACTS OF THE~~ -- THE FACTS OF THE
24 STATEMENTS COMING IN HAVE ALREADY COME IN. THE PAPERS
25 IN WHICH THEY'RE PRINTED ON THEMSELVES DO NOT COME INTO
26 EVIDENCE. THEY NEVER HAVE. THE PEOPLE URGES THE COURT
27 TO STAY WITH THAT. THEY SHOULD NOT COME INTO EVIDENCE
28 BECAUSE THEY ARE NOT EVIDENCE. THEY ARE INADMISSIBLE

1 HEARSAY.

2 REFERRING TO 1370, THE CODE SECTION MR. ADAIR
3 HAS BROUGHT UP, THAT CODE SECTION HAS BEEN JUST TORN
4 APART BY CRAWFORD. WE'RE NOT ALLOWED TO USE THAT --

5 THE COURT: I KNOW. BUT WE DON'T HAVE A
6 CRAWFORD ISSUE HERE.

7 MR. TROCHA: WE DO IN THE FACT THAT CRAWFORD
8 ALSO APPLIES TO HEARSAY. IT APPLIES TO ALL HEARSAY
9 STATEMENTS. THE DECLARANT HAS TO BE AVAILABLE FOR
10 CROSS-EXAMINATION. IT'S NOT JUST FOR THE DEFENDANT TO
11 CROSS-EXAMINE, BUT FOR THE PEOPLE AS WELL. WHAT'S GOOD
12 FOR THE GOOSE IS GOOD FOR THE GANDER.

13 THE COURT: WELL, THAT RAISES A GOOD POINT.
14 UNDER WHAT CONSTITUTIONAL AMENDMENT DOES
15 CRAWFORD ARISE OUT OF, THE 5TH?

16 MR. TROCHA: IT COMES OUT OF THE 5TH AND 6TH.
17 IT'S THE RIGHT TO CROSS-EXAMINE -- CONFRONT AND
18 CROSS-EXAMINE WITNESSES.

19 THE COURT: BUT I THINK THAT'S THE DEFENDANT'S
20 RIGHT.

21 MR. TROCHA: THE WAY WE READ CRAWFORD IS IF
22 THE PEOPLE CAN'T GET IT IN, THE DEFENDANT CAN'T GET IT
23 IN EITHER. THERE'S NO HEARSAY EXCEPTION SOLELY FOR
24 DEFENDANTS.

~~_____~~
~~_____~~
~~_____~~
~~_____~~

1 ~~_____~~, IN FACT, ~~_____~~
2 ~~_____~~. SOME OF THESE FORMED THE BASIS FOR THE
3 PROSECUTION CHARGE OF STALKING AGAINST MR. THOMAS IN
4 WHICH HE WENT TO PRISON.

5 ~~_____~~
6 ~~_____~~
7 ~~_____~~
8 ~~_____~~
9 ~~_____~~
10 ~~_____~~
11 ~~_____~~
12 ~~_____~~
13 ~~_____~~
14 ~~_____~~

15 **THE COURT:** ALL RIGHT. THANK YOU.
16 OKAY. GOING BACK TO THE POLICE REPORTS AS
17 BUSINESS RECORDS OR OFFICIAL RECORDS, I'M NOT PERSUADED
18 THAT THEY FALL WITHIN EITHER OF THOSE CATEGORIES. THE
19 PROBLEM IS THE TRUSTWORTHINESS STANDARD. I THINK YOU
20 HAVE TO TAKE A POLICE REPORT AS A WHOLE. AND YOU HAVE
21 OFFICERS INVESTIGATING THEY'RE GETTING INFORMATION FROM
22 VARIOUS SOURCES. THEY'RE RECORDING WHAT THEY SAW, WHAT
23 THEY HEARD, WHAT THEY'RE TOLD, WHAT THEY'RE TOLD ANOTHER
24 PERSON SAID. IT HAS A WHOLE COMPILATION OF LAYERS OF
25 INFORMATION. AND I DON'T THINK WHEN YOU'RE LOOKING AT
26 THE TRUSTWORTHINESS STANDARD FOR THE RECORD YOU CAN PICK
27 AND CHOOSE AND SAY, "WELL, CERTAIN PARTS OF IT MIGHT BE
28 TRUSTWORTHY AND CERTAIN PARTS MIGHT NOT," AND THEN SAY,

1 "WELL, PART OF IT'S A BUSINESS RECORD AND PART OF IT'S
 2 NOT." I THINK THAT TEST GOES TO THE WHOLE RECORD.
 3 EITHER IT QUALIFIES AS A BUSINESS RECORD OR IT DOESN'T.
 4 AND FOR THAT REASON I JUST DON'T SEE THIS AS FALLING
 5 INTO EITHER CATEGORY. THE REPORTS ARE PREPARED FOR
 6 PURPOSES OF CRIME INVESTIGATION, FOR DOCUMENTATION, FOR
 7 POSSIBLE PROSECUTION. THEY'RE PREPARED WITH A MINDSET
 8 FROM A PROSECUTION AGENCY, WHICH I THINK IS DIFFERENT
 9 THAN A GENERAL BUSINESS RECORD KEPT BY A TELEPHONE
 10 COMPANY OR A BANK OR SOME OTHER INSTITUTION THAT NEEDS
 11 TO KEEP ACCURATE RECORDS JUST FOR PURPOSES OF KEEPING
 12 RECORDS, NOT FOR BUILDING A CASE. SO I DON'T SEE THAT
 13 THEY QUALIFY. THE COURT

14 ~~WITH REGARD TO THE ISSUE ON HIS 2-11-08,~~
 15 ~~PERHAPS SINCE THERE'S A QUESTION AS WHETHER OR NOT~~
 16 ~~SHE WOULD BE WANTED TO TESTIFY AS TO WHAT SHE SAID,~~
 17 ~~THE COURT COULD DECIDE ON THAT ONE. BUT THE COURT RAISED~~
 18 ~~THE ISSUE. LET'S LOOK AT THE CASE. ON THE 11-11-08, IT LOOKS~~
 19 ~~LIKE THE COURT MIGHT APPLY. I'M INTRIGUED BY THE CONCEPT THAT~~
 20 ~~CRAWFORD MIGHT APPLY TO THE PROSECUTION AS WELL.~~
 21 ~~HOWEVER, THAT BUT IT WOULD NEED AGAIN TO BE AN OFFICER~~
 22 ~~AVAILABLE WHO COULD SAY WHAT SHE TOLD THE OFFICER AND~~
 23 ~~I DON'T EVEN KNOW THAT WE HAVE THAT AT THIS POINT. SO~~
 24 ~~IF THE OFFICER SHOWS UP AND IS PREPARED TO TESTIFY,~~
 25 ~~BE PREPARED TO RULE THAT THE OFFICER'S TESTIMONY~~
 26 ~~WOULD BE ADMISSIBLE. AT A MINIMUM, THE OFFICER COULD PRESENT HIS~~
 27 ~~OR HER OBSERVATIONS AS TO WHAT THEY SAW. AND ANY OF THE~~
 28 ~~OFFICERS COULD PRESENT ANY EXCITED UTTERANCE IF SUCH~~

1 EXISTS.

[REDACTED]

9 MR. ADAIR: THANK YOU.

10 THE COURT:

11 [REDACTED]

12 [REDACTED]. AGAIN, THAT WOULD BE A DOUBLE LAYER OF HEARSAY.

13 AND SINCE THE POLICE REPORTS DON'T QUALIFY AS A BUSINESS

14 RECORD OR OFFICIAL RECORD, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 PARTICULARLY AT THE CRAWFORD ISSUE.

20 OKAY. GOING BACK THEN TO THE OTHER POINTS

[REDACTED]

21 [REDACTED] I THINK, IS EVIDENCE CODE 1250.

28 SEVERAL CASES THAT DID NOT ALLOW A DEFENDANT'S STATEMENT

1 REASONS BOTH STATED IN THAT.

2 THE COURT: THE OBJECTION IS NOTED.

3 MR. ADAIR: THANK YOU, YOUR HONOR.

4 THE SECOND [REDACTED] M

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]

41 [REDACTED]

42 [REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

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83 [REDACTED]

84 [REDACTED]

85 [REDACTED]

86 [REDACTED]

87 [REDACTED]

88 [REDACTED]

89 [REDACTED]

90 [REDACTED]

91 [REDACTED]

92 [REDACTED]

93 [REDACTED]

94 [REDACTED]

95 [REDACTED]

96 [REDACTED]

97 [REDACTED]

98 [REDACTED]

99 [REDACTED]

100 [REDACTED]

1 TO COOPERATE AND DECIDED HE DID NOT WANT THAT TO BE
2 DONE.

3 I ALSO RECALL THAT BEFORE OUR LAST SENTENCING
4 HEARING, MR. ADAIR ASKED FOR A CONTINUANCE BECAUSE HE
5 HAD INITIALLY ATTEMPTED TO HAVE A PSYCHOLOGICAL
6 EVALUATION DONE BEFORE THE SENTENCING HEARING, AND
7 MR. BURTON HAD AGAIN REFUSED. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 DATE. SO THE MOTION IS DENIED.

15 WITH REGARD THEN TO SENTENCING, LET ME STATE
16 MY TENTATIVE SENTENCE AND THEN I WILL HEAR ANY COMMENTS
17 FROM COUNSEL.

18 THE TENTATIVE SENTENCE BASED UPON THE FINDINGS
19 OF THE JURY IS TO DENY PROBATION.

20 SENTENCE ON COUNT 1 IS LIFE PLUS 25 YEARS TO
21 LIFE; SENTENCE ON COUNT 2 OF 12 YEARS AND COUNT 3 OF 19
22 YEARS WILL BE STAYED PURSUANT TO PENAL CODE 654.

23 ARE THERE ANY FURTHER COMMENTS FROM THE
24 PROBATION DEPARTMENT AND ANY UPDATE ON CREDITS?

25 MS. PARK: WE HAVE AN UPDATE ON CREDITS, YOUR
26 HONOR. 582, PLUS 87 FOR 2933.1 CREDITS; FOR A TOTAL OF
27 669.

28 THE COURT: 87 4019?

1 MS. PARK: 2933.1.

2 THE COURT: WHAT WAS THE TOTAL?

3 MS. PARK: 669.

4 THE COURT: ALL RIGHT. AND I DON'T THINK --
5 DID YOU STATE YOUR NAME FOR THE RECORD.

6 MS. PARK: NO. IT'S TONI PARK.

7 THE COURT: THANK YOU.

8 ANY FURTHER COMMENTS FROM THE DISTRICT
9 ATTORNEY?

10 MR. TROCHA: NO, YOUR HONOR.

11 THE COURT: IS THERE ANY VICTIM OR FAMILY
12 MEMBERS WHO WISHES TO GIVE A STATEMENT?

13 MR. TROCHA: MR. THOMAS STATED HE WANTED TO BE
14 PRESENT, BUT HE IS NOT PRESENT.

15 THE COURT: ALL RIGHT. AND MR. ADAIR?

16 MR. ADAIR: YES, YOUR HONOR. [REDACTED]

[REDACTED]
18 FOR THE RECORD, I'D LIKE TO OBJECT TO THE
19 STATUTES THAT APPARENTLY MAKE THE SENTENCE MANDATORY.
20 AND THAT'S ON PAGE 7 OF THE PROBATION REPORT UNDER
21 PROBATION ELIGIBILITY, WHERE IT STATES THE DEFENDANT IS
22 ABSOLUTELY INELIGIBLE FOR A GRANT OF PROBATION PURSUANT
23 TO PENAL CODE SECTIONS 1203(B)(2), 1203(E)(3), AND
24 12022.53.

25 FOR THE RECORD, I'M OBJECTING BASED UPON THE
26 MANDATORY NATURE OF THOSE, AND WOULD ASK YOUR HONOR TO
27 USE YOUR DISCRETION IN NOT -- IN CONSIDERING A GRANT OF
28 PROBATION. THE OBJECTION IS BASED UPON CONSTITUTIONAL

23 HOWEVER, EVEN IF THE COURT WERE NOT AND IF THE
24 COURT HAD DISCRETION, THE COURT WOULD NOT BE GRANTING
25 PROBATION IN THIS CASE DUE TO THE SEVERE NATURE OF THE
26 CHARGES. AND I DO NOT FIND THERE ARE ANY GROUNDS THAT
27 WOULD CONVINCE THE COURT THAT YOU WOULD BE ELIGIBLE OR
28 AN APPROPRIATE CANDIDATE FOR PROBATION.

71

1 THE COUNT 2 SENTENCE IS STAYED PURSUANT TO
2 PENAL CODE SECTION 654.

3 THE 12022.53(D), ENHANCEMENT, IS NOT IMPOSED
4 AS THE VICTIM IS THE SAME AS IN COUNT 1.

5 AS TO COUNT 3, FOR VIOLATION OF PENAL CODE
6 SECTION 245(B), ASSAULT WITH A ^{ALLEGED} SEMIAUTOMATIC FIREARM,
7 THE MIDTERM OF SIX YEARS IS ORDERED.

8 ON THE PENAL CODE 12022.5(A), ENHANCEMENT, THE
9 MIDTERM OF FOUR YEARS IS ORDERED.

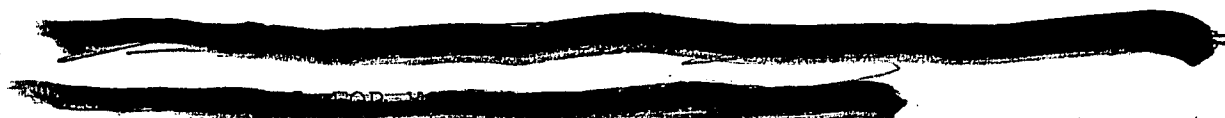
10 ON THE PENAL CODE 12022.55(A), ENHANCEMENT,
11 DISCHARGE OF A FIREARM FROM A VEHICLE, THE MIDTERM OF
12 SIX YEARS IS ORDERED.

13 AND ON THE PENAL CODE 12022.7(A), ENHANCEMENT,
14 THE MIDTERM OF THREE YEARS IS ORDERED; ALL CONSECUTIVE
15 FOR A TOTAL TERM OF 19 YEARS.

16 THE COUNT 3 SENTENCE IS STAYED PURSUANT TO
17 PENAL CODE SECTION 654.

18 ACCORDINGLY, YOU ARE COMMITTED TO THE
19 DEPARTMENT OF CORRECTIONS FOR THE AGGREGATE TERM OF LIFE
20 PLUS 25 YEARS TO LIFE WITH CREDIT FOR TIME SERVED OF 554
21 ACTUAL DAYS -- EXCUSE ME. THAT WAS THE OLD CREDIT
22 DETERMINATION. CREDIT FOR TIME SERVED OF 582 ACTUAL
23 DAYS AND 87 2933 CONDUCT CREDITS -- 2933.1 CREDITS, FOR
24 A TOTAL OF 669.

25 YOU'RE ORDERED TO SUBMIT TO DNA TESTING
26 PURSUANT TO PENAL CODE 296.



1 MR. TROCHA: YES, YOUR HONOR. I ACTUALLY

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 DEFENSE, WHEREIN THE PEOPLE ARE JUST SIMPLY NOT ALLOWED
17 TO CROSS-EXAMINE ANYONE VERSUS THE MENTAL STATE OF THE
18 DEFENDANT.

19 IN ESSENCE, WE WOULD RUN INTO A GRIFFIN ERROR
20 EVERY SINGLE TIME A CASE LIKE THIS CAME DOWN THE
21 PIPELINE. BECAUSE WE'D HAVE THREE WITNESS UP THERE
22 TALKING ABOUT THE DEFENDANT'S MENTAL STATE OF WHICH THEY
23 HAVE NO PERSONAL KNOWLEDGE, BECAUSE IT'S PARTICULAR TO
24 THE DEFENDANT. IN ARGUMENT THE ONLY THING I COULD BE
25 LEFT WITH IS -- THE ONLY PERSON YOU'D HEAR FROM ABOUT
26 MENTAL STATE, WHO'S THE ONLY PERSON THAT'S ACTUALLY
27 QUALIFIED TO TESTIFY ABOUT WHAT HE WAS THINKING AT THE
28 TIME.

1 (THE NEXT WITNESS ENTERS THE COURTROOM.)

2 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND TO BE
3 SWORN.

4 YOU DO SOLEMNLY STATE THAT THE EVIDENCE YOU
5 SHALL GIVE IN THIS MATTER SHALL BE THE TRUTH, THE WHOLE
6 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

7 **SHANE COLBERT,**

8 CALLED BY THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS
9 EXAMINED AND TESTIFIED AS FOLLOWS:

10 **THE WITNESS:** I DO.

11 **THE CLERK:** THANK YOU. PLEASE BE SEATED IN
12 THE WITNESS STAND.

13 WILL YOU PLEASE STATE YOUR FULL NAME, SPELLING
14 BOTH YOUR FIRST AND LAST NAME FOR THE RECORD.

15 **THE WITNESS:** SHANE DAVID COLBERT. S-H-A-N-E,
16 C-O-L-B-E-R-T.

17 **THE CLERK:** THANK YOU.

18 **THE COURT:** SIR, WHY DON'T YOU PULL THE
19 MICROPHONE UP JUST A LITTLE BIT. THERE YOU GO.

20 **DIRECT EXAMINATION**

21 **BY MR. TROCHA:**

22 Q. GOOD AFTERNOON, MR. COLBERT.

23 A. AFTERNOON.

24 Q. YOU'RE A HIGH SCHOOL STUDENT?

25 A. YES.

26 Q. SENIOR, READY TO GRADUATE?

27 A. YES.

28 Q. GOING BACK TO MARCH OF 2004, MARCH 19TH



1 A. ABOUT 15 FEET ABOUT. ABOUT 15, 20 FEET.

2 Q. AND WHAT KIND OF VOICES DID YOU HEAR?

3 A. I HEARD ARGUMENT. I HEARD TWO GUYS ARGUING.

4 Q. SO THEY WERE MALE VOICES?

5 A. YES.

6 Q. COULD YOU HEAR ANY WORDS THAT WERE BEING

7 EXCHANGED?

8 A. NO, NOT REALLY.

9 Q. COULD YOU SEE WHO WAS ARGUING AT THAT TIME?

10 A. NO.

11 ~~11. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

12 ~~12. A. NO.~~

13 ~~13. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

14 ~~14. A. NO.~~

15 ~~15. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

16 ~~16. A. NO.~~

17 ~~17. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

18 ~~18. A. NO.~~

19 ~~19. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

20 ~~20. A. NO.~~

21 ~~21. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

22 ~~22. A. NO.~~

23 ~~23. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

24 ~~24. A. NO.~~

25 ~~25. Q. DID YOU HEAR ANY OTHER NOISES AT THAT TIME?~~

26 Q. ABOUT HOW MANY POPS DID YOU HEAR?

27 A. ABOUT FOUR.

28 ~~28. Q. AT THAT TIME WERE YOU STILL RIDING TOWARDS THE~~

3 Q. COULD YOU SEE WHAT WAS HAPPENING AT THAT TIME?

4 A. NOT REALLY BECAUSE THE CAR WAS BLOCKING MY
5 VIEW.

6 Q. WHAT COULD YOU SEE?

7 A. [REDACTED]

8 [REDACTED], AND THEN BLOOD WAS LIKE EVERYWHERE.

9 Q. THE GUY THAT HAD FALLEN, COULD YOU DESCRIBE
10 HOW HE LOOKED?

11 A. NO.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27 Q. COULD YOU SEE ANYONE INSIDE THE JETTA?

28 A. I SAW ONE PERSON.

79

1 Q. COULD YOU GENERALLY DESCRIBE THAT PERSON.

2 A. HE WAS A BLACK, [REDACTED]

3 [REDACTED] HE LOOKED LIKE 20. [REDACTED]

4 Q. HE LOOKED YOUNG TO YOU?

5 A. YES.

6 [REDACTED]

7 [REDACTED]

8 Q. WHAT HAPPENED AFTER YOU HEARD THESE SOUNDS?

9 A. I STOPPED AND FROZE. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. HOW FAR AWAY WAS HE FROM THE CAR THAT YOU
16 DESCRIBED?

17 A. [REDACTED]

18 [REDACTED] ABOUT 5 FEET. SOMETHING LIKE THAT.

19 Q. THE DISTANCE BETWEEN -- YOU CAN USE DISTANCES
20 HERE IN THE COURTROOM.

21 A. ABOUT HALFWAY FROM ME TO YOU.

22 Q. SO ABOUT --

23 A. ABOUT RIGHT THERE.

24 Q. OKAY.

25 THE COURT: YOU WANT THE RECORD TO REFLECT AN
26 ESTIMATE OF THAT DISTANCE?

27 MR. TROCHA: ABOUT 8 TO 10 FEET.

[REDACTED]



[REDACTED]

6 BY MR. TROCHA:

7 Q. YOU SAID THIS PERSON WAS BLEEDING?

8 A. YES.

[REDACTED]

20 Q. DID YOU SEE HIM MOVE FROM THAT POSITION AT ANY
21 TIME?

22 A. YEAH. [REDACTED]

25 [REDACTED]

27 Q. DID YOU EVER SEE HIM JUMP OVER THE WALL OR DO
28 ANYTHING OF THAT NATURE?

(8/1)

1 A. NO.

2 Q. WHEN HE RAN -- [REDACTED]

4 A. [REDACTED] HE WAS, LIKE, STUMBLING
5 ALONG.

11 Q. HOW LONG DID THIS ENTIRE EVENT LAST?

12 A. NO LONGER THAN FIVE MINUTES.

19 Q. SO YOU STAYED AND WATCHED THIS FOR THE ENTIRE

21 A. YES.

22 Q. [REDACTED], DID YOU SEE THE CAR
23 MOVE AT ALL?

24 A. [REDACTED] IT WAS JUST DEAD -- STOPPED ON THE
25 STREET.

26 Q. YOU SAID YOU HEARD YELLING, BUT YOU COULDN'T
27 MAKE OUT ANY WORDS?

28 A. YES.

Keep suppressed

(82)

[REDACTED]

7 Q. AND YOU REMEMBER A CAR BEING IN THE STREET,
8 CORRECT?

9 A. YES.

[REDACTED]

15 Q. -- AND YOU HEARD THIS ARGUMENT?

16 A. YES.

[REDACTED]

[REDACTED]

26 Q. BUT YOU DID SEE HIM 8 OR 10 FEET AWAY FROM THE

27 CAR?

28 A. YES. HE WAS STANDING STRAIGHT UP AT THE TIME.

(84)

1 Q. OKAY. AND DO YOU REMEMBER ANYTHING ABOUT A
2 TELEPHONE?

3 A. NO.

4 Q. OKAY. BUT YOU DID HEAR ARGUING?

5 A. YES.

6 Q. THANK YOU.

7 **THE COURT:** ARE YOU DONE?

8 **MR. ADAIR:** IF I COULD HAVE JUST A MOMENT,
9 YOUR HONOR?

10 **THE COURT:** SURE.

11 **BY MR. ADAIR:**

12 Q. WHEN YOU SAW THIS PERSON RIGHT AFTER HE HAD
13 [REDACTED], DID YOU SEE A LITTLE GIRL NEAR HIM?

14 A. NO.

15 Q. DID YOU LATER SEE A LITTLE GIRL?

16 A. NO.

17 Q. OKAY. SO -- THANK YOU.

18 **MR. ADAIR:** I HAVE NO FURTHER QUESTIONS..

19 **THE COURT:** REDIRECT?

20 **MR. TROCHA:** BRIEFLY.

21 **REDIRECT EXAMINATION**

22 **BY MR. TROCHA:**

23 Q. MR. COLBERT, [REDACTED], WHERE
24 WAS IT IN THE STREET EXACTLY?

25 A. IT WAS LIKE RIGHT IN THE MIDDLE, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2 Q. NOW, THERE'S TWO SIDEWALKS. [REDACTED]

4 [REDACTED] WHICH OF
5 THOSE SIDEWALKS WAS HE ON?

6 A. [REDACTED] THE ONE
7 ON THE STREET.

9 STREET SIDE OF IT?

10 A. THE STREET SIDE.

11 Q. DID YOU SEE IF HE HAD ANYTHING IN HIS HAND?

12 A. NO.

13 Q. WHEN I SAY THAT, DID YOU SEE HIS HANDS?

14 A. NO.

15 Q. YOU SAID YOU HEARD TWO VOICES?

16 A. YES.

17 MR. TROCHA: YOUR HONOR, NOTHING FURTHER, [REDACTED]

23 THE COURT: [REDACTED] ALL RIGHT. [REDACTED]

27 THE COURT: ANY RECROSS?

28 MR. ADAIR: YES, YOUR HONOR.

1 SPECIFICALLY, [REDACTED]

2 [REDACTED]

3 A. [REDACTED] IT'S 389.

4 Q. YOU WERE LIVING AT 389 AT THAT TIME?

5 A. YES.

6 [REDACTED]

7 [REDACTED]

8 Q. WHERE, IN RELATION TO THAT ADDRESS?

9 A. IT'S DIAGONAL FROM THE PLACE.

10 Q. SO IF I WAS STANDING DIRECTLY IN FRONT OF

11 [REDACTED] TO THE RIGHT OR TO THE LEFT?

12 A. TO THE RIGHT.

13 Q. IS IT THE NEXT HOUSE OVER OR A FEW BLOCKS UP?

14 A. IT'S AN APARTMENT NEXT TO THE APARTMENT IN

15 FRONT OF THE PLACE.

16 Q. WHEN THAT AFTERNOON WERE YOU RESIDING YOUR

17 [REDACTED]

18 [REDACTED]

19 Q. DID YOU HEAR OR WITNESS SOMETHING UNUSUAL?

20 A. [REDACTED] WELL, I HEARD PEOPLE

21 [REDACTED]

22 Q. WHERE WERE YOU WHEN YOU HEARD THEM?

23 [REDACTED]

24 A. I WAS ON SOUTH LINCOLN.

25 [REDACTED]

26 [REDACTED]

27 Q. ABOUT HOW FAR AWAY WERE YOU WHEN YOU FIRST

28 HEARD THE VOICES?